COPY

1 NO. 93CI-04806 JEFFERSON CIRCUIT COURT
DIVISION 10
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5 ROBERT L. MADDOX, et al PLAINTIFFS
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8
9 VS DEPOSITION FOR THE PLAINTIFFS
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12
UNKNOWN DEFENDANT, by His
13 Attorney J. Fox DeMoisey DEFENDANT
14
15 *** *** ***
16
17 DEPONENT: Merrell Williams, Jr.
(January 15, 1996)
18
19
20
21
22
23
24 Nancy L. Nunnelley, RPR
9614 Camille Drive
25 Louisville, Kentucky 40299
(502) 267-4156

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APPEARANCES:

For the Plaintiffs, Wyatt, Tarrant & Combs

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For the Plaintiff, Brown & Williamson

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ALSO PRESENT: William Hoffmann, Esquire

For the Defendant

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1210 Starks Building
Louisville, Kentucky 40202

Videotape Operator

Paul Klapheke, Esquire
1117 Kentucky Home Life Building
Louisville, Kentucky 40202

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1 The videotape deposition of MERRELL WILLIAMS,
2 JR., taken before the Honorable Thomas B. Wine, at the
3 10th Division Courtroom, Hall of Justice, 600 West
4 Jefferson Street, Louisville, Kentucky, on Thursday,
5 March 3, 1994, at about the hour of 11:53 A.M., said
6 deposition being taken pursuant to Notice for use in
7 accordance with the Kentucky Rules of Civil Procedure.
8 *** *** ***
9 VIDEOTAPE OPERATOR: We'll open the record at
10 12:57 P.M.
11 MERRELL WILLIAMS, JR., after first being duly
12 sworn, deposed and said as follows:
13 EXAMINATION BY MR. GORDON A. SMITH
14 MR. SMITH: Good afternoon, Mr. Williams. How are you?
15 MR. WILLIAMS: I'm fine. Thank you.
16 Q. We have taken your deposition or attempted to on
17 several occasions, and at many of those -- on many
18 occasions you objected and your attorney both objected
19 to responding to questions because you had not had an
20 opportunity to talk to your attorney about this case.
21 Do you recall that?
22 A. Yes, sir.
23 Q. You need to speak up a little bit. Make sure we
24 can hear you.
25 A. Yes, sir.

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1 Q. All right. Have you now had an opportunity to
2 talk to Mr. DeMoisey?
3 A. Yes, I have.
4 Q. So that there's no longer a problem with your
5 inability to talk with Mr. DeMoisey, correct?
6 A. In effect, yes.
7 MR. DEMOISEY: Your Honor, if we may, before
8 we get too very much further into this, I'd like to
9 state two things into the record. The first is simply
10 a logistical matter. Mr. Williams is on medication, on
11 of which is a diuretic. So from time to time he may
12 have to, I suppose, just raise his hand if we have to
13 take a short break for that.
14 The second thing is I would like to interpose
15 an objection to the format of this deposition in as
16 follows. You may recall we met on Friday, I believe,
17 to discuss the logistics of this deposition. At that
18 time and prior to that time counsel for Brown &
19 Williamson and the law firm had stated that they were
20 going to provide a memorandum concerning the problems
21 associated with this deposition. As a matter of fact,
22 I went back and reviewed the tapes, and that last
23 promise was made on November the 21st at a hearing here
24 where Mr. Smith, I believe, stated that he would
25 provide a bench memorandum with respect to forcing the

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1 answers, a waiver of questions and things of that
2 nature with respect to this requested deposition.
3 Late Friday afternoon I called Mr.
4 Ballantine, and he advised me that there was not going
5 to be problems with questions concerning the
6 availability of the Fifth Amendment vis-a-vis
7 applicable to a criminal contempt charge, and also
8 there were not going to be questions or argument
9 concerning waiver questions, that simply what he
10 understood, there was going to be questions. The point
11 of the memorandum to be served was that the questions
12 should be individually addressed and individually
13 asserted as to whether or not a Fifth Amendment
14 privilege would apply.
15 At approximately a little after eleven
16 o'clock this morning, I received a hand-delivered
17 memorandum that attempted to go very much further than
18 what I was alleged of -- originally led to believe in
19 that there's a particular manner now being asserted in
20 terms of individually going through every question and
21 evaluating whether it falls within the parameters of
22 the Fifth Amendment privilege or not. There also were
23 cases and assertions that there should be a potential
24 in-camera hearing for the defendant to provide a basis
25 or some defense to his assertion of the Fifth Amendment

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1 privilege, which I have two objections at that point.
2 Number one, this is exactly what I asked not
3 to happen, which was to be sandbagged at the last
4 minute with a memorandum, which as the Court knows, I
5 was responsible for getting Mr. Williams from the
6 airport. I believe his plane came in at 11:55. So
7 delivering me a memorandum at 11:00 on Monday morning,
8 an hour and a half, I object to.
9 The second point is, the Court may recall
10 that it was Brown & Williamson's motion to hold Mr.
11 Williams in contempt. They specifically asked that the
12 sanctions be less than six months and I believe less
13 than $500, which there was some discussion about that.
14 If I recall correctly, the Court said it was up to you
15 to make the decision as to what, if any, contempt
16 charge was going to be placed and to what degree the
17 seriousness would be, vis-a-vis the availability of a
18 jury, et cetera.
19 The point that I raise here is if it's going
20 to be the point to individually go through and
21 accelerate this from a deposition into a hearing on
22 whether individual questions should or should not be
23 answered, vis-a-vis in effect a contempt charge on the
24 issue of contempt, I think that's inappropriate, at
25 least, if not for any other reason, at least for the

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1 reason that until this Court makes a decision as to
2 whether you're going to be -- hear this -- the original
3 contempt charge law in fact, you very well may be, in
4 effect, the judge and the jury on that case. And to
5 have an in-camera hearing in front of you, it has
6 obvious problems.
7 If you read through the cases cited, I don't
8 know if you've had an opportunity to see them or not.
9 But it appears that normally this either occurs in a
10 grand jury setting with a grand jury present or in a
11 trial setting, which gives an opportunity for, you
12 know, the question and answer to be made, the assertion
13 of the privilege, and then at some later time you get
14 into the question before the Court as to whether or not
15 that's a correctly asserted privilege or not. And then
16 after that, then there's -- the Court orders or doesn't
17 order the answer to be made, and then the defendant has
18 an opportunity to perjure himself or comply with the
19 Court's order if you will. And what we're doing here
20 is just jamming that all together right in front of the
21 very judge who very well may be hearing all of this
22 without benefit of a jury. So it seems to me that this
23 is an improvident way to do this. And I object to
24 being jammed this way, and particularly with the
25 inherent problems this could create.

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1 BY THE COURT: Mr. Smith, any response?
2 VIDEOTAPE OPERATOR: May we go off the
3 record?
4 MR. SMITH: Sure.
5 (COMMENTS OFF THE RECORD)
6 VIDEOTAPE OPERATOR: We're back on the
7 record.
8 MR. SMITH: Your Honor, as to the issue of
9 whether or not the Court should consider and rule on
10 specific questions, there wouldn't be any reason for us
11 to have assembled here on a holiday with you here if
12 you weren't going to rule on specific questions being
13 asked. So I think clearly the Court can -- if the
14 question is such that it clearly does not call for
15 something that would be incriminating, reasonably I
16 think the Court is here to rule on those things.
17 I also think, Your Honor, that the law that
18 we've cited in our brief is correct, that it is
19 appropriate for a judge to hear an answer in camera to,
20 in fact, determine whether or not an answer is
21 incriminatory or not. However, because Mr. DeMoisey
22 has objected to that at this point and because of the
23 somewhat unusual nature of these proceedings, I would
24 propose that for today the Court make its ruling based
25 on the questions and not take in-camera testimony from

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1 the witness as to answers for which he takes the Fifth
2 but leave that until the time that it is determined wh
3 is going to hear the case, and at that point we'll kno
4 who the appropriate judge, I think, to hear answers in
5 camera is. But I do think clearly, for instance, if I
6 ask a question like, what is your name, and he imposes
7 the Fifth, that you're here to order him to answer
8 that, because that's clearly not implicating any
9 incriminatory information. So I think the Court shoul
10 listen to the question and rule on the question today.
11 BY THE COURT: Okay. I think, first of all,
12 I wanted to be careful not to be mixing apples and
13 oranges. And we have a number of different parallel
14 actions going on here today. This is, again, a very
15 unique situation, I think, and having spoken with
16 several other circuit court judges today and last
17 Friday, that most of them are not familiar with having
18 had a situation like this before.
19 First of all, the Court's purpose today is t
20 decide whether or not Mr. Williams should answer
21 questions proposed by counsel in this deposition.
22 That, in and of itself, has nothing to do with contempt
23 proceedings under the normal situation. If we were
24 here with a recalcitrant individual who was refusing t
25 answer questions, the Court could order him to answer

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1 those questions or refusing to do so may order some
2 sort of sanction or incarceration. That's a different
3 matter than contempt. Having gone through the
4 deposition then, we would be required to determine
5 whether or not Mr. Williams had done something improper
6 in violation of a court order and whether or not he
7 should be held in contempt of that order. So that is
8 obviously a separate situation.
9 It struck me the same way it did Mr.
10 DeMoisey, that the cases have been cited by counsel for
11 the plaintiff suggest that in-camera proceedings may be
12 appropriate to decide whether or not the defendant or,
13 excuse me, the witness is giving testimony against
14 himself. But in reviewing those cases and considering
15 the logic, I think, again, not mixing apples and
16 oranges, their concern was whether or not someone was
17 going to be giving testimony involving a criminal
18 charge. Let's say, for example, that an individual was
19 asked to admit or deny being in a particular home where
20 he didn't have permission. That's more than just
21 contempt. I mean, that is a violation, perhaps, if he
22 was there without permission with the intent to commit
23 a crime, a violation of our penal code. So that type
24 of answer could be given to the judge in-camera
25 proceedings for the judge to decide whether or not they

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1 should answer out here in front of the rest of the
2 parties.
3 This particular matter, though, is not a
4 criminal charge. If Mr. Williams has violated a court
5 order not to disseminate certain information, it's
6 incumbent upon this Court to enforce its orders and to
7 -- and not -- it's not a criminal matter. So whether
8 he gives them in camera or otherwise, the result's
9 going to be the same, I think, that we're not charging
10 him with a criminal offense. What we're looking to see
11 is whether or not this Court's orders have been
12 enforced. And I've not been able to find, and I've
13 asked and looked, both, and counsel's memorandum really
14 doesn't address the issue, and there may be good reason
15 for it. I've not been able to find where someone can
16 assert a Fifth Amendment right in a contempt
17 proceeding, because there would be no way to enforce
18 this Court's orders if they were able to do so.
19 So somewhere down the line we're going to
20 have to decide whether or not the defendant has
21 violated the court order. That's not the purpose of
22 today's hearing. The purpose of today's proceeding,
23 rather, is a deposition to have certain questions
24 answered. And based upon those answers we'll have to
25 decide whether or not he's in contempt of this Court's

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1 order. But I don't believe, and, Mr. DeMoisey, if
2 you've got a case to the contrary, that the Fifth
3 Amendment privilege is going to apply. This is not --
4 and under the Fifth Amendment it talks about a person
5 being charged with a capital offense or a heinous
6 crime. And at that point they have that Fifth
7 Amendment protection. And that's not what this is.
8 This is a hearing to decide ultimately, not today, but
9 ultimately to decide whether or not he has violated
10 this court order and based upon the information that
11 the Court receives, for the Court to decide what is the
12 appropriate course to follow, whether it should be a
13 jury trial, whether the behavior is so contemptuous
14 that it would require up to 12 months imprisonment or a
15 fine of more than $500 or, if not, based upon the
16 information, that it's something that this Court can
17 decide. It may effective punishment of up to --
18 effective punishment up to six months or a $500 fine.
19 So, I mean, I think we have two different things we
20 need to deal with without jumping ahead and properly --
21 and properly do that.
22 MR. DeMOISEY: Well, I guess my problem is
23 that when we convened last Friday, it seemed to me you
24 were under and believe that you stated you felt the
25 Fifth Amendment was applicable to the circumstance.

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1 BY THE COURT: I will restate again that that
2 was my gut feeling at that point, that there may be
3 some Fifth Amendment protection.
4 MR. DEMOISEY: As I recall the proceedings at
5 that time, you -- I had raised the question about this
6 memorandum. And the Court had also noted that you
7 didn't recall exactly that conversation. But long ago
8 it raised this question, it asked that Brown &
9 Williamson put forward their memorandums of position as
10 to whether or not the Fifth Amendment privilege would
11 apply. And they haven't done that. As a matter of
12 fact, it was my understanding as of late Friday
13 afternoon that that issue wasn't -- was basically
14 conceded, that it did apply. So here we are on the eve
15 of taking this deposition, now for the first time I
16 hear that it doesn't apply for the purpose of this
17 deposition.
18 So what happens here, you're going to ask
19 Merrell Williams to make statements that subjects him
20 to specific criminal contempt based on the motion
21 presented by Brown & Williamson where, you know, I was
22 not noticed that that was going to be an issue that was
23 going to be on today. And to the extent that the cases
24 cited, I believe there is one, and I'm trying to find
25 it real quickly, that says basically contempt is

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1 treated as a misdemeanor, which seems to me to be
2 indicative of criminal or at least quasi criminal to
3 the extent that, you know, Fifth Amendment privilege
4 would apply. And admittedly, I have not seen -- I did
5 not know that that was going to be an issue today. As
6 of last Friday, until several minutes ago, I thought
7 the ability to assert the Fifth Amendment privilege was
8 not even an issue today. As a matter of fact, as I
9 understand it, even the motion -- the memorandum
10 addressed here addresses this as though that is going
11 to be the question. They conceded and now want to try
12 to limit, you know, how broadly or how narrowly he
13 could assert the privilege.
14 BY THE COURT: Well, and I've tried to think
15 this through again from the various potential
16 scenarios. Mr. Williams is going to be asked
17 presumably to discuss what he did following a court
18 order. Now, I'm saying presumably. He may not be.
19 But if that question were to arise, if this Court has
20 misinterpreted the law and has ordered him to answer
21 that question and then we have a contempt proceeding
22 and the Court feels or a jury feels that he has acted
23 with -- in a contemptuous manner and is found in
24 contempt of court and a penalty is imposed, this Court
25 is not going to enforce that penalty until such time as

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1 you had an opportunity for an appeal. If I'm wrong,
2 then the appellate courts are going to grant you the
3 relief you seek, and he's not going to be in jail. But
4 if I'm right, he's no worse off than he was before,
5 because he doesn't have, I don't believe, in exercising
6 the Court's powers of contempt, the right to exercise
7 any Fifth Amendment privilege at this point.
8 MR. DEMOISEY: The problem is, as you've
9 stated, I think that this also, this case operates on
10 many parallels. There also are potentially felony
11 charges that could yet be brought. There are also
12 other charges that they have certainly demonstrated an
13 ability to go to other jurisdictions and willingness to
14 take this testimony and use it multiple places. So I
15 appreciate the Court's position and the thoughtfulness
16 to that, but that only at best -- and I respectfully
17 disagree with the Court. But it only best applies to
18 this particular circumstance right here and does not
19 have application across the board, which once this
20 privilege is gone, it has -- it in effect cannot be --
21 the genie cannot be put back in.
22 And thus, that's why I wanted these things
23 out prior to coming to this deposition, for two
24 reasons. One, so we wouldn't be burning the time we're
25 burning right now, and secondly, so we would be

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1 adequately noticed and had an opportunity to address
2 this issue as opposed to off the fly and being really
3 sandbagged by, I mean, by their own motion they implie
4 they concede the availability of the Fifth Amendment.
5 And now at the beginning of the deposition I'm -- it
6 seems the whole scenario has switched, and now we're
7 going to question the availability right off the top.
8 If that's the Court's thought, then I would
9 respectfully request a continuance such that if this i
10 now going to be the argument, we have an opportunity t
11 brief it and to come in and argue it before all of
12 these things are done.
13 BY THE COURT: Well, again, I think you're
14 mixing apples and oranges with the contempt proceeding
15 with other potential criminal proceedings. The cases
16 cited allow for this Court or any Court to hold an
17 in-camera proceeding if the defendant is asserting
18 Fifth Amendment -- Fifth Amendment privilege or right
19 based upon the fear of some criminal prosecution.
20 MR. DEMOISEY: Which they've announced that
21 there is one.
22 BY THE COURT: Which if at that point then
23 the motion is made or the request is made not to
24 testify based upon that Fifth Amendment privilege, at
25 that time we have an in-camera proceeding to decide

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1 whether or not he does have that privilege. And if he
2 does, then based upon that criminal action, potential
3 criminal action, he may well have that right. But I
4 don't believe he has it solely under these contempt
5 proceedings, which have not happened yet. I mean,
6 there still obviously needs to be a hearing based upon
7 what his testimony is.
8 I mean, again, I don't know what Mr.
9 Williams' answers are going to be to these questions.
10 And if there's no evidence that he's done anything in
11 violation of the court order, then there's not going to
12 be any contempt. But I don't know that at this point
13 until I've heard his answers and we have a show cause
14 hearing why he should not be held in contempt.
15 But again, we can't mix the apples and
16 oranges. If he has a Fifth Amendment right to claim
17 because of some potential criminal prosecution, which
18 this Court has recognized some may well exist, I don't
19 know about other jurisdictions, but some may well
20 exist, some which have already passed because the
21 statute of limitations involving misdemeanor offenses,
22 then I'll hear him in camera about why he should not be
23 required to give testimony as to that particular
24 answer. But I don't think that prohibits information
25 as to the contempt proceedings that are still down the

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1 road somewhere.

2 As to your request for a continuance, you

3 know, this has been an issue that, by your own

4 admission last Friday, has been on the table for a

5 long, long, long time. And if anyone had any

6 information to the contrary, I would think you would

7 have had it, Mr. DeMoisey, to say that the defendant

8 does not have a -- or does have a right to assert in

9 contempt proceedings some Fifth Amendment right.

10 I did not receive this memorandum until about

11 the same time you did, about eleven o'clock. And I was

12 here at eight-thirty in the morning, as I said I would

13 be. So I would have gladly reviewed it earlier. And,

14 but I don't think it states anything different than

15 what they've said all along, and that is generally that

16 the courts are supposed to -- to rule very carefully in

17 those situations where someone asserts the Fifth

18 Amendment right, and just simply asserting it doesn't

19 mean you're entitled to it.

20 And that's -- I mean, I've got my Kentucky

21 Circuit Court Judges Handbook here that's got a full

22 section dealing with contempt. And their memorandum

23 doesn't say anything different than what our little

24 book here says. So I feel like that aspect has not

25 changed dramatically and had hoped perhaps there would

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1 be a case to the contrary to support my gut feeling.
2 But I'm not aware of one, and I'm assuming you're not
3 aware of one. And so at this point I think -- and it's
4 nothing new, at this point I think we need to go
5 forward with the deposition of Mr. Williams before we
6 waste another hour of testimony.
7 MR. DEMOISEY: If I may for the record,
8 Judge, what you're saying is you're going to order and
9 compel Merrell Williams to give testimony against
10 himself where, at least by the defendant's (sic) own
11 motion, they're asking that you at least put him in
12 jail for six months, which you have said you will make
13 that decision at a later time, and it may be a more
14 serious charge which you may impanel a jury. Now, that
15 has to be an assertable prospect, reasonable prospect
16 of a serious criminal charge to the extent that a jury
17 may have to be impaneled. And to compel him to give
18 that evidence in order to find out how seriously we
19 want to charge you, is right square within the Fifth
20 Amendment.
21 BY THE COURT: And what I've said again, Mr.
22 DeMoisey, just a few moments ago, if the Court is
23 incorrect, you're going to have appellate relief
24 available.
25 MR. DEMOISEY: Appellate relief doesn't do

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1 any good once the Fifth Amendment privilege -- the
2 information is out.
3 BY THE COURT: As to any contempt proceeding,
4 it would.
5 MR. DEMOISEY: Well, I must respectfully ask
6 the judge recuse himself in this case, because this is
7 totally, patently unfair both in terms of the ruling
8 and the nature we're being sandbagged.
9 BY THE COURT: Motion's denied. Continue
10 with the questioning.
11 MR. WILLIAMS: Have permission to consult with counsel.
12 BY THE COURT: There hasn't been a question
13 asked yet, Mr. Williams. Let's start with some
14 questions, here.
15 Q. Mr. Williams, do you understand you're under oath
16 here today?
17 A. Yes, sir.
18 Q. You understand if you don't tell the truth, there
19 is the possibility you could be prosecuted for perjury?
20 A. Yes, sir.
21 Q. Mr. Williams, I'm going to hand you Plaintiff's
22 Exhibit 1. It's a copy of the January 7, 1994,
23 temporary injunction in this case. Did you receive a
24 copy of that order on January 7, 1994, or shortly
25 thereafter?

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1 A. Would you repeat the question, please?
2 Q. Did you receive a copy of Plaintiffs' Exhibit No.
3 1 on January 7, 1994, or shortly thereafter?
4 A. Yes, I did.
5 Q. And you discussed that with your counsel,
6 correct?
7 A. Yes.
8 Q. On January 12, 1994, you appeared at the office of
9 Mr. Ballantine and at that time you brought with you
10 three boxes, correct?
11 A. I believe that's correct.
12 Q. And those boxes are in the courtroom today, are
13 they not? I'm sorry. Two boxes and an envelope.
14 A. Two boxes, and I believe this one was sealed
15 narrative, at some other time it was delivered.
16 Q. Are the three packages sitting next to you in the
17 courtroom today the three packages that you brought to
18 Mr. Ballantine's office five days after the temporary
19 injunction was entered?
20 A. I'm sorry?
21 Q. Are the three packages next to you today the three
22 packages that you brought to Mr. Ballantine's office
23 the five days after the temporary injunction was
24 entered?
25 A. They appear to be if -- it's been a while, but I

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1 would say that they do appear to be.
2 Q. Now, do those three packages -- are those packages
3 your compliance with the Court's temporary injunction
4 which is Plaintiffs' Exhibit 1?
5 A. My answer was, it is what it is.
6 Q. My question to you today, do the three packages
7 present in the courtroom today constitute your full
8 compliance with this judge's January 7, 1994, temporary
9 injunction?
10 A. I would respectfully decline to answer on the
11 grounds of the Fifth Amendment privilege that it might
12 tend to incriminate me.
13 Q. Judge, plaintiff requests that the witness be
14 directed to answer the question.
15 BY THE COURT: I'm trying to think if I
16 should allow some additional questioning by defense
17 counsel on behalf of the defendant or consultation at
18 this time with the defendant before I make a ruling.
19 Mr. DeMoisey, do you wish to talk to your client at
20 this time?
21 MR. DEMOISEY: Yes, I do.
22 BY THE COURT: Take about two or three
23 minutes to talk with him.
24 MR. DEMOISEY: That would be fine.
25 MR. JOHN BALLANTINE: Your Honor, before this

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1 deposition record is closed, so that anyone reading
2 this later on doesn't get into -- and there is some
3 confusion in the -- the chronology, I believe the
4 deposition at which these two boxes were produced was,
5 in fact, taken at Fox's office, and I later through a
6 runner picked up the boxes. But they are the boxes
7 that were turned over to me in the January 12
8 deposition. I don't want anybody to get into an
9 argument later that physically that was done at my
10 office versus done at Fox's office. The envelope has
11 endorsed on it the date when Fox delivered that to me
12 here in this courtroom. There was an argument. And
13 it's dated. I've forgotten. But it was at or about
14 that time. So, again, I think it has no substantive
15 bearing on any issue presently pending, but just so
16 there's no argument down the line as to the factual
17 circumstance of which they were delivered.
18 BY THE COURT: Mr. DeMoisey, if you would,
19 please, in your discussions with Mr. Williams determine
20 whether or not he's asserting his Fifth Amendment
21 privilege based upon fear of some criminal prosecution
22 or this Court's contempt powers, whichever it is he
23 asserts that privilege, please. Okay.
24 VIDEOTAPE OPERATOR: We'll go off the
25 record.

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1 (SHORT RECESS)

2 VIDEOTAPE OPERATOR: We're back on the

3 record.

4 BY THE COURT: Okay. Does he need to have

5 the question repeated?

6 MR. DEMOISEY: Please.

7 BY THE COURT: Mr. Smith, you want to repeat

8 the question?

9 Q. Mr. Williams, do the three packages in the

10 courtroom next to the witness stand today constitute

11 your full compliance with Judge Wine's January 7, 1994,

12 temporary injunction?

13 A. No. That was another box that was delivered to

14 Mr. DeMoisey earlier in July.

15 Q. That was a box that Mr. DeMoisey returned to

16 Wyatt, Tarrant & Combs?

17 A. That's correct, sir.

18 Q. Does the box that you returned to Mr. DeMoisey

19 earlier along with the three boxes in the courtroom

20 today constitute your full compliance with Judge Wine's

21 January 7, 1994, temporary injunction?

22 A. I would respectfully assert the Fifth Amendment

23 privilege on the basis that it might tend to

24 incriminate me.

25 MR. SMITH: Your Honor, plaintiff would request that

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1 the witness be directed to answer the question.
2 BY THE COURT: Unfortunately, Mr. Williams
3 keeps dropping off at the end. I hear that he's
4 asserting his Fifth Amendment privilege based upon?
5 A. Based upon.
6 MR. DEMOISEY: Go ahead.
7 A. Excuse me. I'm sorry. I don't know the exact
8 litany, but I think it's based upon the Fifth Amendment
9 privilege tendency to incriminate me. It's the Fifth
10 Amendment privilege, sir.
11 MR. DEMOISEY: Your Honor, in response to the
12 Court's inquiry right before the break, Mr. Williams is
13 asserting the privilege with respect to the pending
14 motion for criminal contempt and also with respect to
15 possible other criminal charges that could be brought.
16 Specifically if you may recall the original complaint
17 that was filed in statements that have been made, Mr.
18 Williams stands accused of theft of the property of
19 Brown & Williamson. Early on we had requested in a
20 motion for a more definitive statement the basis of
21 that. The Court did not order that Brown & Williamson
22 had to further amplify the charges. Therefore, as
23 counsel, I have to assume that the theft charge is or
24 could be a felony charge to which no statute of
25 limitations that I'm aware of would have passed. Also,

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there have been both verbal and written allegations as to extortion; likewise, a criminal offense.

BY THE COURT: All right. First of all, as to the issue of the contempt proceedings, it is again the Court's ruling that Mr. Williams may not assert a Fifth Amendment privilege as far as those contempt proceedings are concerned. Secondly, as to other criminal proceedings, Mr. Williams has previously and today admitted to returning these boxes of documents that are now before the Court. If there is a violation of any criminal penal code -- penal code, he has already admitted to that by virtue of these three boxes. And I don't see whether it matters if there were four boxes and he still kept one or not. By admitting to these three, he's waived any privilege that he may have as to whatever other boxes may exist.

MR. DEMOISEY: On that point I would take issue with the Court. The defense that is available to Mr. Williams as the circumstances stand as to the point that he has admitted returning those boxes, an envelope and the other box, is that it is black letter law of theft, is the taking of someone else's property with intent to permanently deprive. Any evidence given that he did not return all would indicate that he did not return the property such that one could prosecute him

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1 on the theory that not having returned the documents
2 and retaining possession of the information he was
3 accused of stealing, that defense would not be
4 available to him. And, therefore, that's evidences
5 would be used to incriminate him. I would cite to the
6 Court, cited in one of the cases, Young versus Knight
7 cited by -- in the memorandum on page 201 wherein the
8 Court cites to Hoffman versus United States, a Supreme
9 Court case, says, to sustain the privilege, it need
10 only be evident from the implications of the question
11 in the setting in which it is asked that a responsive
12 answer to the question or explanation of why it cannot
13 be answered might be dangerous because injurious
14 disclosures could result. Also, it basically goes on
15 to say in that that if it provides a link in the chain
16 of evidence, that such is protected. So on that basis
17 any evidence that would tend to inculpate him or could
18 be used against him in a proposed or threatened or
19 pending criminal charge is subject to the privilege,
20 which should be liberally construed, not narrowly.
21 BY THE COURT: All right. Why don't we go
22 back, Mr. DeMoisey, you and I and Mr. Williams and ask
23 additional questions on in-camera matter dealing with
24 the potential criminal prosecution.
25 MR. DEMOISEY: If I -- I appreciate the

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1 Court's statement. I object to that in that this Court
2 would still be the Court, at least at this point,
3 possibly being the hearer, adjudicator, juror, in the
4 pending contempt case.
5 BY THE COURT: Okay. And if that were such
6 situation, this Court felt or counsel raised the issue
7 that this Court could not be fair, then another judge
8 would have to make that decision. But that should not
9 prohibit us from this time going forward. So why don't
10 we find out according to the cases whether or not Mr.
11 Williams really does have a claim here and go back in
12 chambers.
13 MR. DEMOISEY: Could I ask for a
14 clarification? When you say if the Court could not
15 fairly adjudicate this, what's this are we talking
16 about?
17 BY THE COURT: I'm talking about the contempt
18 proceedings.
19 MR. DEMOISEY: Okay.
20 MR. SMITH: Your Honor, for convenience, it
21 may be easier for us to leave and leave the record
22 going.
23 BY THE COURT: We'll just go back in the jury
24 room. I don't think the in-camera proceeding should be
25 made a part of this record.

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1 VIDEOTAPE OPERATOR: We'll go off the
2 record.
3 (JUDGE WINE, MR. DEMOISEY AND MR. WILLIAMS LEFT
4 THE ROOM, AND UPON THEIR RETURN THE FOLLOWING
5 PROCEEDINGS OCCURRED)
6 VIDEOTAPE OPERATOR: We're back on the
7 record.
8 BY THE COURT: All right. The Court, for the
9 record, has had a chance to discuss with Mr. DeMoisey
10 and his client the refusal to answer based upon some
11 Fifth Amendment claim of privilege. The Court
12 instructs the defendant witness that he should answer
13 that question proposed by counsel.
14 MR. DEMOISEY: Your Honor, respectfully, in
15 order to preserve the privilege, Mr. Williams would
16 decline to answer the question at this time.
17 BY THE COURT: All right. Mr. Smith, it's
18 not clear to me at this point, but I'm assuming that
19 the Court having ordered the defendant to answer and
20 having refused to do so, that you would certify that
21 question for further review?
22 MR. SMITH: Could we have a moment, Your Honor?
23 (Conferring off the record with Mr. Ballantine and Mr.
24 Hoffman and Mr. Ballantine). Your Honor, the state of
25 this procedurally right now is that the Court has

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1 but that's just this Court's feeling. And I may be
2 wrong about that. So if this Court imposes any
3 sanction at all, it's one that I'm going to suspend
4 until there's been a review by the Appellate Court to
5 make sure before I send anybody to jail for exercising
6 properly a right.
7 Further, I think the Court needs to hear all
8 the questions that are going to be asked and to see to
9 what extent Mr. Williams is going to exercise this same
10 right and if the Court orders him further to answer,
11 because refusal to answer one question would be, in my
12 opinion, not near as serious in determining the penalt
13 as refusal to answer numerous questions if I think
14 there's a pattern.
15 So at this point I think the record should
16 reflect that the witness has refused to answer. I
17 think that that is contempt of the Court's order. But
18 before deciding -- first of all, before deciding even
19 if it should be a Court decision as opposed to a jury
20 decision to answer, I think we need to finish up the
21 hearing and get all the answers down that we have, and
22 then the Court will make that determination. But I do
23 believe at least if I were making that decision, his
24 refusal to answer would be contempt of the court
25 order.

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1 MR. SMITH: May I proceed, Your Honor?
2 BY THE COURT: Yes, sir.
3 Q. Mr. Williams, Judge Wine ordered you not to
4 disclose to anyone other than Brown & Williamson or
5 Wyatt, Tarrant & Combs and your lawyers subsequently
6 any material or information in your control until
7 further order of the Court. Have you complied with
8 that?
9 A. I refuse to answer on the grounds that it might
10 incriminate me, asserting the Fifth Amendment
11 privilege.
12 MR. SMITH: Your Honor, we would request that the
13 witness be ordered to answer that question.
14 BY THE COURT: Mr. Williams, you're directed
15 to answer that question just proposed to you by
16 counsel.
17 MR. DEMOISEY: Your Honor, on behalf of Mr.
18 Williams, it is another way of going around the back
19 door, and I believe Mr. Williams would respectfully
20 decline to answer.
21 BY THE COURT: Mr. Williams, are you still
22 refusing to answer that question?
23 A. Yes, Your Honor, I am.
24 BY THE COURT: All right. The Court finds
25 that Mr. Williams is in contempt on that issue.

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1 Q. Mr. Williams, when you provided the box of
2 documents to Mr. DeMoisey to be returned to Wyatt and
3 when you provided the three packages that are in the
4 courtroom here today pursuant to the Court's order, di
5 you retain any copies of any of the materials in any o
6 those boxes?
7 A. I respectfully decline to answer on the grounds
8 that it might incriminate me based on the Fifth
9 Amendment privilege.
10 MR. SMITH: Your Honor, plaintiff requests that the
11 witness be required to answer.
12 BY THE COURT: Mr. Williams, again, the Cour
13 directs you that you must answer that question propose
14 to you by counsel.
15 MR. DEMOISEY: Your Honor, if I may point
16 out, specifically that question seeks the answer as to
17 whether or not you are in possession of what they
18 allege to be stolen property, which directly calls for
19 potentially an admission of guilt to a criminal
20 offense.
21 BY THE COURT: Maybe I misunderstood. Let m
22 have that question from you again, Counsel. I thought
23 the question was, did you retain any copies of
24 documents that you provided to counsel.
25 MR. SMITH: That's correct.

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1 BY THE COURT: I think he should answer that
2 question.
3 MR. DEMOISEY: Could I have the question read
4 for the record, please?
5 BY THE COURT: I think that the question was,
6 did he retain copies of these documents returned to
7 counsel, and that would be in violation of this Court's
8 order. I do not believe that it is a violation of any
9 penal code here in the Commonwealth of Kentucky. And
10 for that reason he should be required to answer that
11 question.
12 MR. DEMOISEY: I'm not trying to be
13 argumentative, but for the sake of the record, Judge,
14 one of their -- and they can get up and say every time
15 we're in court 'Merrill Williams is a thief, and he
16 took our property'. That is part and parcel a large
17 part of their case. You know, the Court's saying that
18 you disagree that there was a theft?
19 BY THE COURT: I'm saying these were asked --
20 the question was whether or not he kept a copy of these
21 documents that have been returned. You know, Counsel,
22 I guess this is a little extraordinary for a
23 deposition. Again, there might be a way to avoid all
24 these Fifth Amendment claims if, as previously
25 suggested, Brown & Williamson and Wyatt, Tarrant had

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1 made an agreement with various local law enforcement
2 agencies not to prosecute the defendant on any
3 potential criminal charges, which is frequently done
4 and would eliminate all these claims about any
5 privilege that he may have.
6 MR. SMITH: Your Honor, I'm not sure that
7 that's true. I've heard Mr. DeMoisey state here today
8 that there may be some other prosecution looming out
9 there that may not be local that he may have in mind.
10 So I don't think that that's -- that may not do it.
11 Did I mishear that, Mr. DeMoisey?
12 MR. DEMOISEY: No. I -- that is a correct
13 statement in terms of trying to ascertain where you-all
14 think that you can go with these things. I see
15 your-all's imagination as being limitless.
16 BY THE COURT: Well, you know, there is in
17 the Commonwealth of Kentucky, anyway, a case Workman
18 versus Commonwealth where when a defendant enters into
19 an agreement with the state or the commonwealth in acts
20 to his or her detriment, that subsequent prosecution
21 would be prohibited. And again if you get the U. S.
22 Attorney's Office, which I think can bind the U. S.
23 Government, the Commonwealth Attorney's office is going
24 to bind other state offices and the County Attorney's
25 offices, where do they have to go to prosecute this

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1 case?

2 MR. DEMOISEY: Asking me?

3 BY THE COURT: Rhetorically I'm asking you.

4 But, I mean, it's not --

5 MR. DEMOISEY: Well, if they were to do that,

6 I don't -- and admittedly this is a rather bizarre

7 circumstance. I don't know that that would bind the

8 state of Florida, the state of Louisiana, the state of

9 New York, the state of California or any other state,

10 from prosecuting for possession of stolen goods.

11 BY THE COURT: Don't they need a prosecuting

12 witness to effectuate a prosecution in those states?

13 MR. DEMOISEY: I believe they would.

14 BY THE COURT: And if this party is agreeing

15 not to prosecute in exchange.

16 MR. DEMOISEY: If the principle of estoppel

17 were available, I would see the Court's point. If the

18 United States Government agrees not to prosecute and

19 the Commonwealth of Kentucky agrees not to prosecute

20 and Brown & Williamson and Wyatt, Tarrant & Combs enter

21 into an agreement that they agree not to prosecute in

22 any other jurisdiction as consideration for this

23 agreement, I would think that that would be.

24 MR. SMITH: Your Honor, I would say that my

25 client shouldn't be placed in a position of waiving the

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1 ability to pursue one wrong in order to be able to
2 prove another wrong. And in any event, we're not going
3 to be able to do that here today, so I really think we
4 ought to get on and get the questions on the record.
5 BY THE COURT: Well, I agree with you that
6 you can't do anything today, because we don't have any
7 the prosecuting authorities here. But I don't agree
8 with you that you can't give up prosecution in one area
9 in order to effectuate another, because it happens
10 every day.
11 MR. SMITH: Well, I agree it's possible to
12 do. But to, I mean, to say that you've been wronged
13 and you should be willing to pass up pursuing remedy
14 for one in order to deal with a subsequent wrong
15 against you, that just doesn't strike me as the right
16 thing to do. But I think we ought to just move forward
17 at this point.
18 BY THE COURT: I think the law provides that
19 you need to ask every question. You need to be ordered
20 to answer every question. You need to refuse every
21 question, and then decide whether or not there should
22 be some sanction down the road. And otherwise, as I
23 see some of these cases, they lose that right to assert
24 that they should be held in contempt. Although, again,
25 it seems to me it's ultimately going to be one contempt

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1 proceeding or one contempt sanction for no matter how
2 many questions he asks. Just be a question if, in
3 fact, punishment is appropriate, the amount of
4 punishment. So let's go on with the questions.
5 MR. SMITH: Your Honor, I would simply like
6 to state for the record that there would obviously be
7 follow-up questions if I got the answer. I'm going to
8 ask the predicate questions that would have led to many
9 more questions had I gotten the answers.
10 Mr. Williams, you have refused to answer a
11 question about whether you had disclosed to anyone
12 other than Brown & Williamson, Wyatt Tarrant & Combs or
13 your lawyers whether you have given any of the
14 information or documents to any of them. Let me ask
15 you this. Have you turned over to John T. Ballantine
16 of Ogden, Newell & Welch, all of the documents,
17 computer disks and other storage-retrieval systems and
18 other tangible and electronic materials that you took
19 from Brown & Williamson?
20 A. I respectfully decline to answer on the grounds
21 that it might incriminate me, using -- asserting the
22 Fifth Amendment privilege.
23 MR. SMITH: We request that the Court order the witnes
24 to answer.
25 BY THE COURT: Again, Mr. Williams, the Cour

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1 feels that that is a response that you should -- should
2 make either yes or no.
3 MR. DEMOISEY: Your Honor, I would again,
4 without being redundant, I believe this answer -- that
5 the question seeks an answer that is potentially
6 admission of a penal offense aside from the contempt
7 order. And I believe Mr. Williams is respectfully
8 declining to answer.
9 BY THE COURT: Having heard your counsel
10 speak, Mr. Williams, do you still refuse to answer at
11 this time?
12 A. Yes, Your Honor, I do.
13 BY THE COURT: Again, the Court feels his
14 refusal to answer the question is a violation of the
15 Court's order.
16 Q. Mr. Williams, since January 7, 1994, the date on
17 which Judge Wine entered his temporary injunction, have
18 you used for any purpose any of the materials which you
19 took from Brown & Williamson?
20 A. I respectfully decline to answer on the grounds
21 that it might incriminate me. I assert the Fifth
22 Amendment privilege.
23 MR. SMITH: Your Honor, we ask that the Court order Mr.
24 Williams to answer.
25 BY THE COURT: Could I ask for a

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1 clarification of use of any material?
2 MR. SMITH: Your Honor, I was paraphrasing the Court's
3 orders. The order says in paragraph 1B that the --
4 that Mr. Williams is prohibited from, quote, using for
5 any purpose or in any manner any of the material or
6 information defined in paragraph 1A here of, closed
7 quote, and 1A of course, lists documents, computer
8 disks, tangible electronic materials and things
9 belonging to plaintiffs, et cetera. I can rephrase th
10 question if the Court would like.
11 BY THE COURT: I just wanted to see if you
12 wanted to be more definitive about the word 'use'.
13 Q. Let me reask the question if I may. Mr. Williams
14 in the temporary injunction the Court commanded that
15 you and enjoined you and restrained you from disclosin
16 to anyone other than Brown & Williamson and Wyatt,
17 Tarrant & Combs any material or information in the
18 possession or control of you or from using for any
19 purpose or in any manner any of that material or
20 information. My question is, since this order have yo
21 used for any purpose or in any manner any of the
22 material or information defined in paragraph 1A of the
23 temporary injunction?
24 MR. DEMOISEY: Before Mr. Williams answer, I
25 would object to the question in that it seeks

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1 attorney-client privilege. Since at least the order,
2 some of that information has been by this Court's order
3 permitted to be made from Mr. Williams to counsel, and
4 at least part of that question is asking for
5 attorney-client privilege material.
6 BY THE COURT: Can we narrow that to exclude
7 discussions he had with his client with his attorney?
8 Q. We can narrow that. I'll reask the question. Mr.
9 Williams, since January 7, 1994, other than in using it
10 for discussions with your counsel have you used for any
11 purpose or in any manner any of the material or
12 information described in paragraph 1A of the temporary
13 injunction?
14 A. I respectfully decline to answer on the grounds
15 that it might incriminate me, asserting the Fifth
16 Amendment privilege.
17 MR. SMITH: We request that the witness be ordered to
18 answer that question.
19 BY THE COURT: Again, Mr. Williams, the Court
20 is ordering you to answer that question as proposed by
21 counsel.
22 MR. DEMOISEY: Your Honor, may I interject?
23 It's -- I do not want to go by without making the
24 appropriate arguments, but they're beginning to be the
25 same. I don't want to drag this on. Could I simply

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1 say, at least for a while, anyway, that our position is
2 that it's asking for material that's protected by the
3 Fifty Amendment, and that would encompass both the
4 contempt circumstance and also direct penal charges
5 without having to go through the whole thing every
6 time? I mean, I will if you want me to. It's
7 basically the same argument.
8 BY THE COURT: As you might well imagine, the
9 last thing this Court wants to do is interfere with the
10 attorney-client privilege. So certainly any objection
11 based upon that might be valid. But we're talking, I
12 assume, about other discussions besides what he has had
13 with you concerning these documents.
14 MR. DEMOISEY: Right.
15 BY THE COURT: And the use of these documents
16 or divulging these documents to any party other than
17 his attorney, which I think under the most recent Court
18 order would exempt -- you would be exempt from
19 violating the court order. But otherwise, Mr.
20 Williams, it is still having -- knowing your counsel's
21 arguments previously made both in camera and out here,
22 it is still your desire not to answer that question, is
23 that correct --
24 A. Yes, Your Honor.
25 BY THE COURT: -- as to the use of the

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1 material?
2 A. Yes, Your Honor.
3 BY THE COURT: Court finds that that is a
4 answer that should be given and finds that the witness
5 has violated that court order.
6 Q. All right. Mr. Williams, since January 7, 1994,
7 have you reproduced in any way any of the material or
8 information defined in paragraph 1A of the temporary
9 injunction?
10 A. I decline to answer on the grounds of the Fifth
11 Amendment privilege. I assert the Fifth Amendment
12 privilege.
13 MR. SMITH: We request that the witness be ordered to
14 answer that question.
15 MR. DEMOISEY: Your Honor, could I have a
16 minute with my client to discuss that question with
17 him?
18 BY THE COURT: Couple minute break.
19 MR. SMITH: Off the record.
20 BY THE COURT: Go off the record.
21 VIDEOTAPE OPERATOR: We'll go off the record
22 (SHORT RECESS)
23 VIDEOTAPE OPERATOR: We're back on the
24 record.
25 BY THE COURT: All right. Mr. Williams, are

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1 you still refusing to answer the last question
2 concerning reproduction of those documents?
3 A. Yes, sir, I am, Your Honor.
4 BY THE COURT: The Court finds again that
5 he's violated this court order to answer.
6 Q. Mr. Williams, is it correct that you moved to
7 Mississippi in March of 1994?
8 MR. DEMOISEY: Your Honor, may I interpose an
9 objection? This is a depositional type objection. We
10 went through the movings and going to Mississippi and
11 his mother's friends and all this sort of thing in the
12 last deposition. And that's been asked and answered.
13 MR. SMITH: Your Honor, I propose to spend about five
14 minutes setting a factual setting for Your Honor so
15 Your Honor will understand a little bit of the setting
16 of the rest of the questions. It won't take but a
17 minute, and I think it's important for the Court to
18 understand the timing and the preliminary issue -- the
19 preliminary facts to set this up.
20 BY THE COURT: The objection to the
21 repetitiveness is denied.
22 MR. DEMOISEY: I'm sorry. I didn't hear.
23 BY THE COURT: Your objection to this being
24 repetitive is denied.
25 Q. Did you move to Mississippi in approximately March

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1 of 1994?
2 A. The family matters which you're bringing up are
3 that I left -- left Kentucky and moved to Mississippi
4 sometime around March the -- after the March 31st
5 hearing, yes.
6 Q. Short -- I'm sorry. Say that again.
7 A. After March 31st, which we had a hearing in this
8 courtroom. It was sometime in April.
9 Q. Sometime in April you moved?
10 A. Yes. And these --
11 Q. Before you moved to Mississippi, did you contact
12 Mr. Don Barrett?
13 A. Yes, I did.
14 Q. And you contacted Mr. Don Barrett because of his
15 reputation as a lawyer having tried the Horton case
16 against a tobacco company, correct?
17 A. That --
18 MR. DEMOISEY: Your Honor, I would again
19 renew my objection. This has been asked and answered,
20 gone through at length and the reasons why there was
21 initial conversation.
22 BY THE COURT: Objection's overruled. Go
23 ahead and answer.
24 A. I'm sorry?
25 BY THE COURT: Go ahead.

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1 A. I initiated a conversation with Mr. Barrett. I --
2 I did know that he had a background in litigation in
3 the Horton case.
4 Q. And the Horton case being a case he represented
5 Mr. Horton in suing a tobacco company, correct?
6 A. In one of the cases, yes.
7 Q. And before you left Kentucky you faxed Mr. Barrett
8 and suggested that it might be good for the two of you
9 to meet, correct?
10 A. Under the questions that you asked before, I said
11 that we met at Irv's Delicatessen shortly before.
12 Q. Did you fax, send a fax to Mr. Barrett before you
13 left Kentucky?
14 A. I believe it was a fax, yes, sir.
15 Q. And in the fax you suggested to Mr. Barrett that
16 you two should meet, correct?
17 A. I suggested that we should have a social meeting,
18 yes.
19 Q. That's not what the fax -- the fax did not say a
20 social meeting, did it?
21 A. Yes, it did.
22 Q. Do you have that fax?
23 A. No, sir, I don't.
24 Q. Did you dispose of it?
25 A. I -- I don't recall what happened to it. But I

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1 did not dispose of it. I just don't have it.
2 Q. You threw it away?
3 A. I never thought of it as important.
4 Q. Now, after you moved to Mississippi did you follo
5 up on this fax that you sent to Mr. Barrett, the
6 plaintiff's lawyer against tobacco companies?
7 A. Yeah, I did. Yes.
8 Q. And did you, in fact, arrange to meet with him?
9 A. Yes, I did.
10 Q. And you met with him at what, at what place?
11 A. Again, in the last deposition I asserted that I
12 met with him at Irv's Delicatessen on Old Canton Road
13 in Jackson, Mississippi.
14 Q. Did you have any documents with you at that
15 meeting?
16 A. No, sir.
17 Q. Was Mr. Barrett alone at that meeting?
18 A. Well, as I previously indicated in the last
19 deposition, he was joined, so to speak, with other
20 people, one of whom I thought was with the FBI. I
21 wasn't sure.
22 Q. Now, one of the people who met with you at the
23 deli was Mr. Richard Scruggs you've later found out,
24 correct?
25 A. That's correct.

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1 Q. Was this the first time you'd ever met with Mr.
2 Scruggs?
3 A. Yes.
4 Q. Was it the first time you'd ever spoken with Mr.
5 Scruggs?
6 A. Yes.
7 Q. And how many other people were present with Mr.
8 Barrett and Mr. Scruggs at the deli?
9 A. Well, I was aware that there was a -- another
10 person, a woman, who was sitting on the other -- at the
11 other table with Mr. Scruggs.
12 Q. Describe that person to the Court, please.
13 A. She was tall, dark hair, pretty.
14 Q. Who was she there with, Mr. Barrett or Mr.
15 Scruggs?
16 A. I think she was with Mr. Scruggs.
17 Q. What was her name?
18 A. I do not know her name.
19 Q. Do you know her first name?
20 A. No. I -- I don't know her name.
21 Q. Did you hear anybody call her by any name?
22 A. No. She didn't say anything.
23 Q. Did not speak?
24 A. I -- I didn't hear anything.
25 Q. Did anyone have a tape recorder at this meeting?

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1 A. I don't know. I doubt it.
2 Q. To your knowledge, did anyone have a tape recorder
3 at this meeting?
4 A. It was not a meeting that was other than a social
5 meeting.
6 Q. Well, what did you discuss at the meeting with Mr.
7 Barrett and Mr. Scruggs, both of whom are plaintiffs'
8 lawyers against tobacco companies?
9 A. As I said in the previous deposition, the -- the
10 discussion was a social discussion about 'what kind of
11 beer are you going to drink'. And essentially I had
12 just finished the deposition -- I mean, the complaint,
13 compulsory complaint, and the compulsory complaint was
14 on my mind. And I might have mentioned something along
15 those lines. But I made it very clear that I didn't --
16 would not discuss anything about tobacco.
17 Q. So you discussed generally your litigation against
18 Brown & Williamson, is that correct?
19 A. Well, it was public record at the time.
20 Q. So you discussed generally your litigation against
21 Brown --
22 A. Well, it was in the news --
23 Q. Let me finish the question.
24 A. Go ahead.
25 Q. So you discussed your litigation with Brown &

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1 Williamson in a general sense, is that correct?
2 A. I don't recall discussing anything but the general
3 sense that I had just filed a -- the...
4 Q. Now, is it your testimony, Mr. Williams, that you
5 moved to Mississippi, and before you left you faxed Mr.
6 Barrett. You then met with Mr. Barrett and Mr. Scruggs
7 in a delicatessen, and the purpose for that meeting was
8 purely social. Is that your testimony?
9 A. Is that my testimony?
10 Q. Yeah.
11 A. Yes, it is.
12 Q. When did this meeting take place?
13 A. Specifically, the date is -- was around March the
14 6th. There was a -- that's the best I can -- best I
15 can come up with. I think March the 6th, somewhere,
16 6th, 7th, right around in there.
17 Q. I thought you said that you didn't move to
18 Mississippi until after March 31st?
19 A. That's correct.
20 Q. Well, you just told me you met on March the 4th.
21 A. That's correct.
22 Q. You were down in Mississippi on a trip before you
23 moved?
24 A. Yes, I was.
25 Q. Why did you take this first trip to Mississippi in

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1 early March?
2 A. Well, I was looking for a job. And I also took my
3 boat down to the gulf coast and left it there.
4 Q. Now, when did you come back to Mississippi?
5 A. It was sometime around the 8th or 9th, somewhere
6 in there, or the 10th. I came back specifically with
7 the notion of making sure that I was available in case
8 I was needed at the Department of Justice intervention
9 hearing.
10 Q. Did you -- did you meet with Mr. Scruggs again
11 before you returned to Kentucky for that first trip
12 around, I believe you said, the 8th of March?
13 A. Would you repeat the question, please?
14 Q. Yes. I believe you've testified that you returned
15 to Kentucky for that trip on about March the 8th, is
16 that correct?
17 A. Yes.
18 Q. And you'd gone down on approximately what date?
19 A. I -- it was shortly after the -- the compulsory
20 complaint, which was the 4th, and the deposition, which
21 was the 3rd. And I think it was the 6th.
22 Q. So you --
23 A. I might have left the 5th. I might have left the
24 6th. It's a one-day trip to Jackson. I can't be
25 absolutely sure.

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1 Q. You made a one-day trip to Jackson, and during
2 that one-day trip you met with Mr. Scruggs and Mr.
3 Barrett?
4 A. No. I went -- excuse me. I went to Jackson. My
5 mother lives in Jackson. And I went there. It was a
6 day's trip driving. It took a day to drive.
7 Q. How long did you stay there when you -- after you
8 drove down there?
9 A. Approximately three days, I believe, three or four
10 days. I'm not absolutely sure at this point. But it
11 wasn't very long.
12 Q. Okay. And after you got there, how many -- well,
13 how many days were you there before the meeting at
14 Irv's Deli took place?
15 A. I think it was the second day.
16 Q. Second day. Now, did you call Mr. Barrett, or did
17 he call you to set up the meeting?
18 A. I called him. I called his office.
19 Q. Did you call him after you arrived in Jackson?
20 A. Yes.
21 Q. After you sent the fax to Mr. Barrett before you
22 went to Jackson, did you communicate with Mr. Barrett
23 by phone before going to Mississippi?
24 A. Yes. He returned -- he returned -- if I can
25 remember exactly what I said in the fax, which was in

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1 February, I believe, or early February, I said that --
2 that I note when I go through Mississippi the William
3 Faulkner, John Grisham and then there's Lexington. And
4 I think about the Horton case. My mother also knew his
5 father. And, therefore, in repeating what I said in
6 the other deposition, I thought that Mr. Barrett might
7 be friendly and helpful in terms of procuring a job in
8 teaching. And the -- I initiated the conversation with
9 him. And at some point he called or faxed something
10 back. I don't recall. And it was something like 'come
11 on down, yeah. Let's meet at Irv's', or whatever. I
12 was not aware that he was involved in any kind of
13 litigation at the time.
14 Q. Well, you didn't know what cases he was currently
15 handling?
16 A. Oh, I didn't know that he was involved in any
17 litigation whatsoever. So what's happening?
18 BY THE COURT: Does that interfere with
19 your --
20 VIDEOTAPE OPERATOR: No.
21 Q. You simply knew historically he had been involved
22 in the litigation against tobacco companies?
23 A. Yes, sir. Obviously -- are we picking up
24 something?
25 VIDEOTAPE OPERATOR: (Shakes head).

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1 BY THE COURT: Well, what had happened, I
2 turned off the Court's microphone because I was afraid
3 it might be feedback. But you talk so low I can't hea
4 what you're saying.
5 A. Oh, I'm sorry.
6 BY THE COURT: So I had to turn the
7 microphone back on. If it's not providing feedback,
8 we'll just leave it like that.
9 A. Okay.
10 Q. I'm not sure the Court heard what you were saying,
11 because I noticed the Court was straining to hear. Is
12 it correct that you were saying in your mind you
13 thought of Don Barrett along with Faulkner and John
14 Grisham?
15 A. Simply because of the geographic areas, yes.
16 Lexington is just before you get to Jackson. And I
17 attended the University of -- Ole Miss, and that's
18 where Faulkner lived.
19 Q. So you were thinking about going back to
20 Mississippi, and you were thinking Faulkner and Grisha
21 in Lexington, and all of a sudden it was just, 'ah-ha,
22 Don Barrett lives near there. I think I'll call him'.
23 Is that what happened?
24 A. That is very clear in the last deposition where
25 you asked me that same question and/or something very

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similar, and I said that what you are describing is basically correct. The -- I initiated the -- the fax, the meeting. I talked with him. And I essentially knew him through my mother's acquaintance with her father -- with his father.

Q. You say you knew him. You knew who he was. You'd never met him, had you?

A. No. No, I didn't. I never met him before.

Q. Now, during your -- your three or four-day trip to Mississippi in early March of 1994 --

A. Can I correct that? It was more than three or four days. It was longer than that. It was over a week, I think.

Q. You said three or four days. But you now think it's more?

A. No. I'm telling you I was in Jackson. And then I moved down to the coast to have my boat worked on. I took the boat down there.

Q. After you went to Mississippi in early March, this trip we're talking about, how long were you back in Louisville before you moved?

A. Approximately two weeks or until the hearing on the 31st. And shortly thereafter I left and went back down there.

Q. Now, you've described the meeting with Mr. Scrugg

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1 and Mr. Barrett and a third person who was female at
2 Irv's Deli. During this trip to Mississippi in early
3 March for a couple of weeks, did you meet with Richard
4 Scruggs again?
5 A. In March?
6 Q. Yes.
7 A. No.
8 Q. Did you talk to Richard Scruggs again?
9 A. Yes, I did.
10 Q. You did?
11 A. Yes.
12 Q. What was that conversation?
13 A. The conversation was -- took place on the gulf
14 coast. I was at a Popeye's calling into his office. I
15 didn't remember his name. He had my resume for
16 teaching. And he said he knew a dean down at the gulf
17 coast and that he would -- he could be helpful. And I
18 was looking for a job in teaching. And I made a phone
19 call. It was probably the last day that I was on the
20 coast. I spent the night on my boat at Kavosovich's
21 boat yard and was there approximately four or five
22 days, I think. And made a call to Don Barrett's office
23 in Lexington, and I said essentially, you know, I don't
24 know this guy's name. I thought it was Skaggs. And
25 they referred me to -- a secretary referred me to the

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1 name Scruggs. And their firm was Scruggs, Malot,
2 something. I don't know. The -- the -- I made a phone
3 call, and I got the secretary. He was not in the
4 office. But I gave my number. And the -- I was called
5 back by the secretary saying that he was out of -- he
6 was out of the -- out of the country or I think he was
7 in Bermuda. And he called right back.
8 Q. At your meeting at Irv's Deli did you understand
9 how Mr. Scruggs appeared to meet you there?
10 A. How he appeared?
11 Q. Yeah. Why he was there.
12 A. Well, I -- I really wasn't sure if they were --
13 they were together. And I had not seen Mr. Barrett
14 before. So I -- I assumed that there was some
15 connection. I don't know.
16 Q. Well, of course, you assumed there was some
17 connection. Mr. Scruggs came up and joined the
18 discussion at Irv's Deli with you and Mr. Barrett,
19 didn't he?
20 A. He was at the next table, yes.
21 Q. And you're aware that Mr. Scruggs lives in
22 Pascagoula?
23 A. Right.
24 Q. Which is how far from Jackson driving?
25 A. It's about four hours.

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1 Q. So you don't -- you're not saying it was
2 coincidence that Mr. Scruggs appeared at the deli when
3 you were meeting with Mr. Barrett, are you?
4 A. I have no idea.
5 Q. You assume not, don't you?
6 MR. DEMOISEY: Objection.
7 A. I don't know.
8 Q. Okay. And did Mr. Scruggs suggest that you could
9 call him when you got to the coast?
10 A. Yes. Yes. And that was perfectly properly as fa
11 as I could understand. There was no indication. I di
12 mention that I was looking for a job, that I needed a
13 job very badly, that shortly I was going to be divorce
14 if I didn't have one. And he said that he knew a dean
15 on the coast. There was a gulf coast junior college
16 system. And I naturally followed up that particular
17 lead. And I give him my resume, and he gave it to the
18 -- to one of the assistant deans, academic deans. I
19 don't know which.
20 Q. You were aware that Mr. Scruggs was representing
21 plaintiffs in cases against tobacco companies, weren't
22 you?
23 A. I was not.
24 Q. When did you become aware of that?
25 A. I first heard of it sometime thereafter, but I

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1 don't know. It didn't strike me as being -- I'm -- I'm
2 sure that they had -- that there was an action going on
3 at the time. I don't think they had filed a case at
4 that time. I'm sure they hadn't filed a case. I know
5 that sometime thereafter the case was filed. I saw it
6 in the newspapers, news reports.
7 Q. But Mr. Scruggs at least told you that he was
8 considering filing a case, correct?
9 A. I don't believe he did.
10 Q. There was no discussion -- is it your testimony
11 that there was no discussion of any kind about tobacco
12 companies or tobacco litigation when you met with Mr.
13 Scruggs and Mr. Barrett during this trip in early March
14 to Mississippi? Is that your testimony?
15 A. If there was any discussion, it was on the public
16 record. I made it very clear that anything that I said
17 was going to be from the public record if I said
18 anything from the public record. There was nothing
19 that was clandestine or that might have something to do
20 with anybody's litigation. It was already printed and
21 on the papers and out there. Then -- then I would nod
22 or say something of that sort. Now, I do know that my
23 -- particularly my complaint was there, and it had
24 been done to the extent that it was overnight, so to
25 speak. And in that there were certain allegations that

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1 were made.
2 Q. So there was some discussion of tobacco
3 litigation, correct?
4 A. Not exactly tobacco litigation other than that
5 might have been on the public record.
6 Q. So there was some discussion of tobacco
7 litigation, right?
8 A. I didn't -- I didn't -- I didn't participate in
9 any litigation that would have been affecting
10 statements of litigation, no.
11 Q. Well, you did -- you just said that there was some
12 discussion about things that might have been on the
13 public record, right?
14 A. On the public record.
15 Q. All right. What were the things that were on the
16 public record?
17 A. I don't recall. I don't recall.
18 Q. But there were such discussions?
19 A. Well, the Horton case, for example, I suppose that
20 might have come up. I admired Don Barrett and his work
21 for this black man who was more or less persecuted. I
22 believe he had been threatened, also, a couple of
23 times. His family had been threatened. I think we
24 talked more in personal terms than anything else. He
25 has a very religious concept of his pursuit of this

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1 activity. And if you want to call that tobacco
2 litigation, I suppose so.
3 Q. And you talked about your litigation against Brown
4 & Williamson, correct?
5 A. No, sir. I had a complaint there. And if any
6 discussion was made, I don't recall that it was
7 specific.
8 Q. You say you had a complaint there. You mean down
9 there with you at the meeting?
10 A. Well, I just left the office with the complaint,
11 my complaint, countercomplaint.
12 Q. Did have you a copy of your complaint,
13 counterclaim against Brown & Williamson with you at the
14 meeting at Irv's Deli?
15 A. I believe I did.
16 Q. All right. Now, you say you just left the
17 office. You left the office a day or two earlier when
18 you left Kentucky, right?
19 A. That's right.
20 Q. And you just happened to keep it in your
21 possession the whole time until you got to Irv's?
22 A. Well, I'm fascinated by the -- the -- the idea of
23 having a complaint, a counterclaim after not being able
24 to talk with my attorney. So I took it along, as I do
25 the hearings sometimes. I have hearings that I have

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1 looked into since 1992, '93.
2 Q. So to make sure I understand your testimony, your
3 counterclaim, answer and counterclaim was filed on
4 March 4, 1994. And several days later after the
5 filing, after traveling to Mississippi, staying at, was
6 it your mother's house?
7 A. Partially.
8 Q. Staying at your mother's house for several days,
9 arranging to have a meeting with Mr. Barrett at Irv's
10 Deli, you just happened to take your counterclaim in
11 this case with you by coincidence?
12 MR. DEMOISEY: Objection. Objection. It's
13 repetitive. I think this is the third time he's asked
14 the same question, and it's argumentative. Witness has
15 answered.
16 MR. SMITH: Your Honor, I think the answer's not
17 credible. I'm trying to make sure that it's really the
18 answer.
19 BY THE COURT: I think, Mr. Smith, the answer
20 stands on its own. Whether it's credible or not will
21 be subject to other witnesses. Objection sustained.
22 MR. SMITH: I'm sorry. Did you sustain?
23 BY THE COURT: I sustained.
24 Q. Thank you. So is it correct that you met with two
25 men -- with two men at Irv's Deli who you had never

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1 seen before along with your complaint, and the
2 discussion was purely social?
3 A. That is -- that is exactly true.
4 Q. And you did not discuss anything about the
5 complaint that you took to the meeting with you, is
6 that correct?
7 A. Yeah. Twisting the complaint into something that
8 wasn't available to anybody and everything that had
9 been followed on that point was available to the
10 public.
11 Q. So you took the counter -- when I said complaint,
12 I meant counterclaim. So you took the counterclaim,
13 answer and counterclaim to the meeting to provide it to
14 Mr. Barrett and Mr. Scruggs?
15 A. Not necessarily so, no. I reread things, and I
16 did -- as a matter of fact, I gave it to my mother to
17 read.
18 Q. Did you give a copy of your answer and
19 counterclaim to Mr. Barrett or Mr. Scruggs?
20 A. No, I did not.
21 Q. Have you ever given a copy of your answer and
22 counterclaim to Mr. Barrett or Mr. Scruggs or anyone
23 working for them?
24 A. I think we're going to at this point --
25 Q. I'm sorry?

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1 A. The assertion of the Fifth Amendment privilege.
2 I'm going to assert the Fifth Amendment privilege on
3 this question.
4 MR. DEMOISEY: Your Honor, may I speak with
5 my client, please?
6 BY THE COURT: Just take a minute to do that,
7 please. Go off the record.
8 VIDEOTAPE OPERATOR: We'll go off the record
9 (COMMENTS OFF THE RECORD)
10 VIDEOTAPE OPERATOR: We're back on the
11 record.
12 BY THE COURT: I'm sorry. Mr. Williams, are
13 you prepared to answer the question about giving a copy
14 of the document to Mr. Barrett and Mr. Scruggs?
15 A. Of the specific -- what with the counterclaim?
16 Q. The question is, did you give a copy of your
17 answer and counterclaim in this case to Mr. Scruggs and
18 Mr. Barrett?
19 A. I've considered that answer, and I will answer the
20 question as I probably did at some point in time. But
21 I don't recall.
22 Q. Did you do it at the meeting at Irv's Deli?
23 A. No, I did not.
24 Q. Did you show them your answer and counterclaim at
25 the meeting at Irv's?

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1 A. I believe I did.
2 Q. Did they go over it a little bit?
3 A. No, I don't think so. I don't even recall -- it's
4 -- it's -- it truly has been a long time, and I
5 remember bringing the counterclaim down there, because
6 it was right hot off the press. And I was rereading
7 it, as I normally do. And my mother read it. I
8 believe that I brought it there. I don't know if
9 anybody went over it and went through it. I don't
10 recall that as being the substance of our social
11 meeting.
12 Q. And one reason you took the complaint -- the
13 answer and counterclaim with you was so that you could
14 show to these two -- to at least Mr. Barrett and then
15 Mr. Scruggs that you were, in fact, this person who was
16 accused of stealing documents from Brown & Williamson,
17 correct?
18 MR. DEMOISEY: Objection, Your Honor. That's
19 been asked and answered. That's about the third form
20 of that question.
21 BY THE COURT: Objection's overruled. You
22 may answer.
23 A. I'm sorry, sir?
24 BY THE COURT: I'm sorry. Objection's
25 overruled. You should answer that question.

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1 A. Would you restate it, please?
2 Q. Yes. One of the reasons you had this complaint
3 with you was so you could show Mr. Barrett and then Mr.
4 Scruggs, who showed up later, that, in fact, you were
5 the person who had been accused of stealing documents
6 from Brown & Williamson, correct?
7 A. Well, my reputation by way of and answering your
8 question in this way, I had already achieved some kind
9 of reputation for whatever, through the newspaper and
10 -- and everyone seemed to know who I was anyway. And
11 whether it had to do with the counterclaim or any kind
12 of allegations about documents, I don't know. The
13 answer is my reputation preceded me, so to speak.
14 Q. So Mr. Barrett and Mr. Scruggs clearly knew who
15 you were?
16 A. I know Mr. Barrett did, because I actually
17 initiated a conference with him, a meeting with him.
18 Q. He knew you were the person who was involved in
19 litigation about stolen documents from B&W, right?
20 A. Well, the problem with the word stolen. The --
21 the --
22 Q. How about allegedly stolen. Does that make you
23 feel better?
24 A. The question would be answered as follows, that
25 Mr. Barrett did know me. He knew who I was.

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1 Q. He knew you were Merrell Williams, the man allege
2 to have stolen documents from B&W, right?
3 A. He knew me as Merrill Williams, sir, and I suppos
4 he knew me through the newspapers.
5 Q. And you assume the same is true of Mr. Scruggs,
6 correct?
7 A. If you can assume that, I suppose I could.
8 Q. All right. Now, how long after the meeting at
9 Irv's did you go to the coast?
10 A. In the last deposition you asked the question, an
11 I believe that I said a couple of days or maybe it was
12 the next day. The weather wasn't very good. I had
13 problems getting the trailer out of my mother's yard,
14 the side of it. I believe I -- I left the next day,
15 whichever day that was. I don't remember exactly.
16 Sometime between the 5th and the 7th.
17 Q. Now, before you left Jackson to go to the coast
18 during this trip to Mississippi in March, did you have
19 any subsequent conversations with Mr. Barrett after th
20 meeting at Irv's?
21 A. Not with Mr. Barrett. No. I had a conversation
22 with his secretary at his law firm.
23 Q. Have you had any conversations with Mr. Barrett a
24 all since the meeting at Irv's?
25 A. Have I had a conversation with him? I don't

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1 recall exactly. I -- I might have had a telephone
2 conversation with him or a conversation. I don't
3 remember.
4 Q. Well, there must be something in your mind that
5 leads you to believe that. When was this subsequent
6 conversation?
7 A. I don't remember.
8 Q. What was it about?
9 A. I don't remember that, either.
10 Q. What is it that jogs your memory that you had such
11 a conversation?
12 A. It was something about religion, I think. And I
13 don't remember exactly when that took place. If you
14 think of this in terms of years it's gone on. I don't
15 know.
16 Q. Have you met with Mr. Barrett since this meeting
17 at Irv's?
18 A. I've not met with Mr. Barrett. I've not had a
19 meeting with Mr. Barrett at all. I haven't seen him.
20 Q. Now, when you got to the coast during this trip in
21 March, you say you called Mr. Scruggs' office, but he
22 wasn't there. Right so far?
23 A. Right. His secretary phoned him, and I believe he
24 was in Bermuda.
25 Q. And he called you back immediately?

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1 A. He called me back at Popeye's.
2 Q. So you're at a pay phone at Popeye's?
3 A. Yeah.
4 Q. And you called his office, and they said 'he's in
5 Bermuda, but wait there. He'll call you right back'?
6 A. Yes. That's exactly what happened.
7 Q. Were they expecting you to call?
8 A. He had left -- when we left the meeting on the
9 note that he would get in touch with this dean and send
10 my resume, and I was going to make an inquiry about
11 that the last day that I was on the coast, because I
12 was leaving the coast, and I knew he was somewhere on
13 the coast, but I wasn't exactly sure. I got that phone
14 number from Mr. Barrett's secretary. I did phone for
15 the purpose of finding out if he had any leads or was
16 going -- he knew that this guy that he knew was -- had
17 a job in teaching. And I knew that I couldn't get a
18 job at that time. I had discussed the possibility of
19 working for a law firm without tobacco litigation or
20 any involvement of litigation in tobacco with Mr.
21 Scruggs. He said that he might be able to place me in
22 one of the law firms down there, which I thought was
23 very nice. So -- and the conversation, to bring this
24 to a head, I hope, Mr. Scruggs was on a cell phone, I
25 assume, and phoned the Popeye's number that the

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1 secretary had taken down. And he said that he had not
2 gotten any word back from the dean, but that if I
3 wanted to go to work for a law firm in the meantime, in
4 the interim, that he thought he could place me with
5 some firm, which he did, Barton and Williams. And I
6 said, "Well, when could -- do you think I could
7 start?" And he said, "I would imagine you could start
8 any time." Hence I came back to Mississippi on the --
9 after the 31st, the hearing here on the 31st. I think
10 that shortens the answers.
11 Q. Had Mr. Scruggs taken your resume with him from
12 Irv's back to the coast?
13 A. I assume he did. Yes. I gave it to him.
14 Q. And did you ask him to do anything with it?
15 A. I asked him if he would give it to the person that
16 he knew.
17 Q. And you -- do you know that he did?
18 A. I -- yes, I do. I assume he did. I got a phone
19 call sometime during the period of time. I don't
20 remember. A lot was going on.
21 Q. But no job at that college panned out, correct?
22 A. No. And I was happy to have the job at Barton and
23 Williams.
24 Q. All right. So when no job at the college panned
25 out, you called, or that's a fact that you called Mr.

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1 Scruggs, and he told you he could get you a job at a
2 law firm, and he did, right?
3 A. That's -- yeah. I -- that is what -- what he
4 said. He didn't specifically go beyond that. And --
5 but he said that I could probably start immediately if
6 I wanted to.
7 Q. Did he tell you that on this one phone
8 conversation?
9 A. Yes.
10 Q. So he didn't have to call this firm to ask them if
11 they needed anybody or if they would hire you or
12 anything else?
13 A. No. You misunderstood me. He said place me with
14 the proper firm. He didn't say that he knew he might
15 be able to place me with a firm. He didn't
16 specifically say that firm.
17 Q. All right. But he told you he could get you a job
18 with a firm. It turned out to be Barton and Williams?
19 A. That's correct.
20 Q. Barton and Williams is where?
21 A. It's in Pascagoula.
22 Q. You understand the Barton and Williams to be
23 personal friends of Mr. Scruggs?
24 A. I have used Harvey Barton as my attorney. I thin
25 at this point I would -- I would say everybody in

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1 Pascagoula is friends with -- with Dick Scruggs and
2 Harvey Barton.
3 Q. Did you interview with Barton and Williams before
4 they hired you?
5 A. Not exactly an interview, no. I didn't sit down
6 and -- there was one -- an interview as such. No, not
7 in the sense of a college interview or something like
8 that.
9 Q. I mean, you basically showed up to start work and
10 started work, right?
11 A. Well, there was a -- there were a few questions
12 that I asked about, you know, the possibilities of --
13 of health insurance particularly and that sort of
14 thing.
15 Q. They were prepared to hire you?
16 A. Yes.
17 Q. As a favor to Mr. Scruggs?
18 A. I don't think it -- I -- I don't know. They were
19 prepared to hire me. They did hire me.
20 Q. Did they ask you about your experience working at
21 Wyatt, Tarrant & Combs?
22 A. Well, that was the problem, you see. Here
23 particularly I was in the newspapers, and I think that
24 Wyatt, Tarrant & Combs has quite a tight hold on this
25 particular area. The allegations that were in the

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1 newspapers, the statements that were in the press were
2 not necessarily what you would be able to say was
3 popular. Also, I think it might have been a different
4 situation in another state, Utah or some place else,
5 where they don't smoke as much. I don't know. But
6 certainly the feeling I got was that there was no
7 problem with my having worked with Wyatt, Tarrant &
8 Combs even under the circumstances of my -- my feelings
9 that there was an ongoing fraud at that particular
10 place.
11 Q. Did you talk to Barton and Williams about the fact
12 that there was litigation going on where accusations
13 had been made about you?
14 A. Williams I don't even know. I've met him. I --
15 date the girl who is his estate person. Harvey Barton
16 as I say, is a fine man. And I've used him as an
17 attorney on a couple of occasions.
18 Q. Mr. Williams, let me ask that question again.
19 A. Okay.
20 Q. The question was, did you talk to anyone at Barton
21 and Williams about the litigation in Kentucky before
22 you went to work there?
23 A. Are you talking about the specifics of litigation
24 of documents and that sort of thing, that's forbidden
25 from talking about, no, I did not.

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1 Q. Well, I'm asking a simpler question than that.
2 Did you make your prospective employers aware of the
3 litigation in Louisville and the accusations that had
4 been made against you?
5 A. Specifically to the point that I could not have a
6 job with anyone who had any kind of tobacco litigation,
7 and specifically they do not.
8 Q. Did you --
9 A. And that was the tenor of maintaining --
10 maintaining the position here so that we didn't
11 interfere with the lawsuit, and that is why Barton and
12 Williams -- they deal with asbestos. And, to my
13 knowledge, the only crossover in asbestos is the
14 allegations on some kind of filter problem, something,
15 which I don't think it's a privileged thing. There's a
16 lawsuit here in town on that. But to -- to be
17 specific, when I was there, I made the point that I
18 could not have anything to do with tobacco litigation.
19 Q. All right. So is it correct that Mr. Scruggs on
20 your behalf contacted Barton and Williams, and when you
21 showed up at Barton and Williams, they were prepared to
22 hire you?
23 A. Yes. He initiated the -- the -- the -- the
24 contact and was very helpful.
25 Q. Did you provide any references to Barton and

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1 Williams?
2 A. I don't recall that -- a vitae, the same thing
3 that I had sent to the universities.
4 Q. Did you provide any references to Barton and
5 Williams?
6 A. Do you mean references such as --
7 Q. Former employers, for instance.
8 A. Well, I never heard of Walt Jones, for example.
9 So I couldn't -- I couldn't say since has been
10 represented as my -- my supervisor, I didn't know him.
11 So I couldn't refer to him. I doubted that anybody at
12 Wyatt, Tarrant & Combs would -- certainly my direct
13 supervisor, Ernest Clements, who is a paralegal, I
14 doubt that he would have recommended me.
15 Q. Did you provide any job references to be checked
16 with by Barton and Williams with regard to any prior
17 employment that you had ever held?
18 A. Names as in references?
19 Q. As in people they could check with to see what
20 kind of employee you might be.
21 A. I gave them my vitae. The vitae had a list of
22 various people on it. And I don't even remember. It's
23 been so long since I've used it. Yes, that I did
24 provide.
25 Q. You provided your resume?

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1 A. The answer is yes, I provided a vitae.
2 Q. Yeah. Did you give them -- did you give them the
3 vitae on the day you showed up and started work?
4 A. No, I don't remember exactly when it was given. I
5 think I might have mailed it, mailed it or I don't
6 know.
7 Q. You don't know, do you?
8 A. I don't remember that one, no.
9 Q. Did they ask you to identify any people that they
10 could contact to check with about your prior
11 employment?
12 A. No.
13 Q. And you're not aware that they made any checks
14 from any prior place, are you?
15 A. My assumption would be that Wyatt, Tarrant & Combs
16 would be the first person since I had not taught in
17 eleven years, that they would contact. And to my
18 knowledge, they did not contact the person who was
19 supposed to be my supervisor, Walt Jones, and/or Robert
20 Maddox, who was the principal in this case.
21 Q. As far as you know, Mr. Williams, you were hired
22 solely on the recommendation of Mr. Scruggs, correct?
23 A. As far as I know, you could put that spin on it,
24 suppose. I also think that -- that I have a different
25 reputation in the south than I do up here in Kentucky.

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1 Q. What kind of work did you do at Barton and
2 Williams?
3 A. I'm sorry. That would be attorney-client
4 privilege.
5 Q. What kinds of cases did you work on?
6 A. I worked on a pro bono case called the Gill case
7 and several other cases that had to do with
8 litigation. This was a criminal case. I did some
9 litigation -- I did some research.
10 Q. For the pro bono case?
11 A. Yes.
12 Q. Did you work on any case other than the pro bono
13 criminal case?
14 A. I didn't specifically work on any case. I did do
15 legislative work. I looked into legislative work and
16 followed the congressional hearings and records and so
17 forth.
18 Q. What congressional hearings?
19 A. Well, the -- there's a legislative report that
20 comes out and various things that come down through
21 that. I was following -- that was one.
22 Q. I'm not sure. Are you talking about the federal
23 government?
24 A. Federal government, yeah.
25 Q. And you were following a legislative report, is

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1 that right?
2 A. Yeah, like, things that had to do with dangerous
3 objects or lawsuits, that sort of thing.
4 Q. What was the name of this report?
5 A. I think it's the Legislative Report. It comes out
6 of Congress.
7 Q. Did that include reports of hearings being held by
8 Congressman Waxman about the tobacco industry?
9 A. No, not for my employment. But I did follow that
10 myself. I followed it very carefully, yes.
11 Q. And that was in these publications you were
12 reviewing --
13 A. But I did that for my own personal --
14 Q. All right. Let me finish.
15 A. -- satisfaction.
16 Q. Let me finish the question. It makes things go
17 more smoothly.
18 A. Okay. Sure.
19 Q. While you were at Barton and Williams reviewing
20 these legislative reports, contained in those
21 legislative reports were reports of hearings going on
22 about the tobacco industry, correct?
23 A. No. I was not working for Barton and Williams fo
24 hearings ongoing on tobacco. I specifically made the
25 point that there simply was no connection with tobacco

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1 or could be no connection between tobacco because of
2 the possibilities of me knowing too much.
3 Q. But while you were there, you did review
4 legislative reports?
5 A. I never discussed anything with any of the
6 attorneys about that.
7 Q. Mr. Williams, listen to my question. While you
8 were at Barton and Williams, you did review legislative
9 reports about hearings in Congress relating to tobacco?
10 A. No, I did not.
11 Q. You never did that?
12 A. No.
13 Q. Where did you do it, then?
14 A. Well, I did it at my -- at my home, at my
15 residence, on my own time.
16 Q. So you took those reports home and read the
17 tobacco parts?
18 A. No, sir. I ordered them from Congress.
19 Q. They were available to you at Barton and Williams,
20 weren't they?
21 A. No, they weren't.
22 Q. You just told me that you kept up with that
23 through the legislative reports that you got at Barton
24 and Williams.
25 A. No, no. I told you that I had the legislative

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1 report, which is a guide to the various hearings that
2 Congress holds or held before the energy and the last
3 -- they don't hold any hearings now other than White
4 Water and the Energy and Commerce Department
5 particularly. But as far as my procurement of the --
6 what you're referring to documents relating to tobacco
7 hearings, I got those myself through calling first the
8 archives -- well, it's actually -- it's a free
9 service. You get -- you get these books and such as
10 the Waxman hearings, et cetera. And I was following
11 those, particularly in light of Mr. Sandefur
12 testifying. And I had seen that on CNN. And I kept up
13 with this.
14 Q. All right. Mr. Williams, how long did you work
15 for Barton and Williams?
16 A. Until -- now, I've got to think about this,
17 because I -- I actually worked there in November, I
18 think it was November, up till November, and then I
19 worked for Jewell Ardon.
20 Q. At Barton and Williams were you a full-time
21 employee?
22 A. No. I was contract labor.
23 Q. You didn't have health benefits?
24 A. I was full time -- I was in the beginning. Then
25 became a contract laborer.

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1 Q. Why did you go from full time to contract?
2 A. Because they couldn't insure me, I think.
3 Q. What was your salary when you started?
4 A. Thirty-six, I think.
5 Q. Thirty-six thousand dollars a year?
6 A. Yeah.
7 Q. And when you went to part time, what were you paid
8 by the hour?
9 A. It was the same thing, contract labor.
10 Q. Whatever the hourly was for that?
11 A. Whatever I did, yes.
12 Q. Now, getting back to Mr. Scruggs, Mr. Scruggs, you
13 say, interrupted his trip to Bermuda to call you back
14 on the pay phone at Popeye's to discuss your
15 employment. When -- what was the next conversation you
16 had with Mr. Scruggs?
17 A. I'm sorry. Would you repeat that, please?
18 Q. After the call at the pay phone at Popeye's from
19 Bermuda, when was the next conversation you had with
20 Mr. Scruggs?
21 A. I don't remember exactly the next conversation.
22 Q. Well, when was the next meeting with him?
23 A. I think the -- the question -- I don't recall. I
24 think that on this one that I need to take the Fifth
25 Amendment based on the possibility of that it might

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1 incriminate me.
2 MR. SMITH: Your Honor, I would say that the fact of a
3 meeting cannot under any circumstances be
4 incriminating.
5 MR. DEMOISEY: Could I talk with my client a
6 second, Your Honor?
7 BY THE COURT: Let's take about a ten-minute
8 break. While you do that, I've found a couple cases
9 I'd like you to look at, too, while you're discussing
10 this with him.
11 MR. DEMOISEY: Okay.
12 VIDEOTAPE OPERATOR: We'll go off the
13 record.
14 (SHORT RECESS)
15 VIDEOTAPE OPERATOR: We're back on the
16 record.
17 BY THE COURT: All right. The Court has jus
18 provided to counsel a copy of two cases. One is
19 Kinslow versus Carter 282 S.W.2d 141, the old Court of
20 Appeals, 1955. The second one being Arnett versus
21 Meade, 462 S.W.2d 940, 1971, also out of the old Court
22 of Appeals. Kinslow, as best that I can tell, has bee
23 cited only one time. And that's in the Arnett case,
24 and Arnett has not been cited since, since its
25 publication. So I'm assuming that they are both still

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1 good case law with one caveat. In Kinslow it indicates
2 that a petitioner's assertion of privilege under the
3 Fifth Amendment of our federal constitution would have
4 no applicability in our state constitution or under our
5 state laws. In the Commonwealth of Kentucky, I should
6 say. And I think this was previous to the adoption of
7 the -- Kentucky adopted the 14th Amendment I think in
8 1976. So I don't think that it no longer applies, but
9 I think that there are some dicta in here that would be
10 important in this case, and that is that whenever an
11 individual is compelled to give testimony in a court
12 proceedings that that information, coerced information
13 may not be used against them in any subsequent
14 proceedings of a criminal nature. And that was in
15 Kinslow. And I think that they address the same thing
16 in Arnett where they were talking about questions of
17 estoppel, double jeopardy and merger and whether or not
18 the subsequent prosecution would be possible. And the
19 answer again seemed to be in the negative if coerced.
20 And I don't know, Mr. DeMoisey, if you read
21 that the same way, or Mr. Smith. But the -- and the
22 only reason I point that out is for, again, not knowing
23 what the appellate courts are going to do or look at
24 this, but, in fact, if this is still good case law, it
25 seems to go against your client's position that he

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1 cannot be forced to answer these questions.
2 MR. DEMOISEY: Well, I haven't had obviously
3 the chance to research this. The Kinslow case is 40-
4 some years old, and Arnett versus Meade is 24 years old
5 or five. But I see that neither of these cases direct
6 themselves to the question that we're fundamentally
7 initially hitting here, is when there is a pending
8 motion for criminal contempt and the Court's
9 entertaining that, can the witness be compelled to give
10 evidence against himself with a criminal contempt
11 motion pending. I don't believe either one of those
12 address that, unless we're going to get to the odd
13 proposition that if the footnote is to be literally
14 applied, then we would have the incruitous proposition
15 that if he's coerced to give testimony against himself,
16 that it couldn't be used subsequently in the contempt
17 hearing. I don't think that's -- I just don't think
18 the cases address this rather novel circumstance we're
19 addressing today as to whether or not it forbids using
20 this testimony in other jurisdictions, other cases
21 subsequent on criminal charges. I'm not sure that --
22 I'm going to have to research that. In the back of my
23 mind that doesn't ring true to me, but I couldn't cite
24 the Court a case off the top of my head. It does -- I
25 do have a problem, because in -- I saw in the dicta in

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1 the -- the earlier case, the Kinslow case, it seemed to
2 be saying that when it was talking about -- this is on
3 the last page, 144, in the event petitioner gives
4 testimony under compulsion to either the grand jury or
5 the Court that you voluntarily participate in sexual
6 intercourse with her father, such coerced incriminating
7 evidence cannot be used against her in any subsequent
8 criminal proceeding in this commonwealth. And I'm --
9 it seems somehow incruitous to me that a person who
10 stands accused is forced to give a deposition wherein
11 he is required to give evidence against himself where
12 there is incarceration as a potential pending penalty,
13 the severity of which is yet to be determined by this
14 Court as to whether or not a jury will be necessarily
15 impaneled or not. And I don't think either of these
16 cases go to the novel question we have here today.
17 We're talking about, in the cases that I have
18 seen, is when Mr. X over here is the named defendant in
19 an ongoing criminal case or an ongoing grand jury
20 investigation, and they bring in someone else who was
21 present in this case, a victim, of the crime and
22 forcing them to testify. I believe as a possible --
23 with the idea that they possibly could incriminate
24 themselves I think is entirely different than forcing
25 someone who has been pointedly named both in general

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1 allegations of theft and extortion and things of that
2 and particularly on the motion for criminal contempt.
3 You're asking the very defendant to give evidence
4 against himself. And I think that goes directly
5 against both the Kentucky and the United States
6 constitution. And it makes no sense to say, making hi
7 to give testimony today, that it can't be subsequently
8 used against him if it's coerced. Seems to me to
9 either invalidate the Fifth Amendment privilege in its
10 entirety. If subsequently a Court rules that it wasn'
11 coerced, then it can be used against him. By the same
12 token, if it's subsequently determined that it was
13 coerced using the definition that the footnote in
14 Arnett at 945, justification for coercion can be found
15 only in the properly based finding that there is no
16 reasonable probability of exposure. And I would have
17 to assert that there is a reasonable probability of
18 exposure, because that's exactly what Brown &
19 Williamson takes every opportunity to say and to move.
20 BY THE COURT: Well, I suspect the
21 reasonableness is something that rests with the
22 appellate court's determination and whether or not thi
23 Court was not being reasonable in its determination.
24 And I don't know too often of a situation where they'v
25 gone back and disturbed the finding of the Court that

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1 it exercised its discretion in finding in such a matter
2 as this.
3 MR. DEMOISEY: Well, when we have a pleading
4 civilly albeit taken that they charged civilly, civil
5 fraud, theft, extortion, things of that nature and when
6 we have a motion by them naming Merrell Williams as the
7 target of a motion for criminal contempt, it seems to
8 me that there is reasonable probability to believe that
9 if they can gather enough evidence or convince this
10 Court, that he will be prosecuted. And they're asking
11 him to give the information that will allow them
12 theoretically to do that or certainly enough leads to
13 find out where they can find evidence. And I don't
14 believe a defendant, aside from having to admit or
15 deny, has to give aid and comfort to persons trying to
16 prosecute him.
17 BY THE COURT: Well, again, I think this and
18 also in the Arnett case toward the end of that case,
19 the last page it talks about the inherent power of the
20 Court to enforce its orders and the necessity of this
21 Court to do so without interference from the
22 legislature. Again, impresses upon me the power of the
23 Court to exercise those criminal sanctions without
24 regard to the Fifth Amendment claims that you say the
25 defendant has a right to make. So all I'm trying to

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1 do, Mr. DeMoisey, having looked at these two cases very
2 quickly, is to point out that I think there's something
3 here that merits consideration by your client in this
4 matter. And I just felt that there was an issue here
5 that we needed to further make him aware of.
6 MR. DEMOISEY: Appreciate that.
7 BY THE COURT: I've done that. And you still
8 wish to assert the claim in those situations, that's
9 fine.
10 MR. DEMOISEY: I assert.
11 BY THE COURT: I'm sorry to interrupt there.
12 Q. Mr. Williams, the pending question is -- could you
13 read the question back?
14 (THE QUESTION COMMENCING ON PAGE 81, LINE 22
15 WAS READ BY THE REPORTER)
16 Q. All right. I'll reask him. After the telephone
17 call at the pay phone at the Popeye's from Mr. Scruggs
18 while he was off in Bermuda, when was the next meeting
19 or conversation you had with Mr. Scruggs?
20 A. On this I will assert the Fifth Amendment
21 privilege on the grounds that it might incriminate me.
22 MR. SMITH: Your Honor, we request that he be ordered
23 to answer that, particularly with regard to the fact of
24 a meeting that can in no way involve -- the meeting
25 itself cannot be a criminal act. And so the fact of

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1 meeting someone or talking with someone can in no way
2 be the subject of a Fifth Amendment objection. I
3 believe we cited a case to that effect in a brief we
4 submitted earlier today, and I would request that you
5 order the witness to answer.
6 BY THE COURT: Based on the cases that
7 indicate that mere presence is not enough to assert a
8 Fifth Amendment claim of privilege, the Court directs
9 Mr. Williams to answer that question.
10 A. Your Honor, I respectfully decline to answer the
11 question.
12 BY THE COURT: All right. The Court then
13 finds that Mr. Williams has violated this Court's order
14 to answer the question.
15 MR. DEMOISEY: Could I have a minute to speak
16 with my client on that question, please?
17 BY THE COURT: I thought that's what you went
18 out to talk with him on before.
19 MR. DEMOISEY: I did, and then we got off on
20 this.
21 A. I've got a question.
22 MR. DEMOISEY: Just take one minute.
23 BY THE COURT: All right.
24 VIDEOTAPE OPERATOR: We'll go off the
25 record.

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1 (SHORT RECESS)

2 VIDEOTAPE OPERATOR: We're back on the

3 record.

4 A. Your Honor.

5 BY THE COURT: Go ahead, sir.

6 A. I would like to recant and get that question again

7 and answer it.

8 Q. Do you remember the question?

9 A. Yes, I do.

10 Q. Can you answer it?

11 A. Wait a minute. Wait a minute. I -- I did have a

12 meeting subsequently after that.

13 Q. With Mr. Scruggs?

14 A. Yes.

15 Q. Where?

16 A. It was in the Hearing Loss Center.

17 Q. Hearing Loss Center?

18 A. Yeah. That's a litigation building, litigation

19 building.

20 Q. Is that the Hearing Loss Center a building of Mr.

21 Scruggs?

22 A. Yes. I believe he owns it.

23 Q. Where plaintiffs with potential hearing loss come

24 in to get tested to sign up to be plaintiffs?

25 A. Not necessarily tested. But it is a building

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1 where they process.
2 Q. Claims?
3 A. Claims, yeah. One of them. I think there's
4 several.
5 Q. And when did that take place?
6 A. I -- I really do not remember exactly when that
7 meeting took place.
8 Q. What's your best recollection?
9 A. Sometime in April. And it might have been two
10 weeks in April, sometime in there.
11 Q. Middle of April, you think?
12 A. Yeah, middle of April, somewhere in there.
13 Q. Who else was at the meeting?
14 A. At this point I would assert the Fifth Amendment
15 privilege and decline to answer on the grounds that it
16 might incriminate me.
17 MR. SMITH: Your Honor, the -- just as the fact the
18 meeting occurred does not implicate Fifth Amendment,
19 other persons who are present does not implicate the
20 Fifth Amendment. In fact, I believe we've cited cases
21 directly on point to the fact that the presence of
22 someone at a meeting is not -- does not implicate self-
23 incrimination. I fail to see how the fact that a third
24 party was at a meeting could implicate this witness in
25 criminal conduct. And I request that you order the

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1 witness to answer.

2 BY THE COURT: Again, Mr. Williams, the Court

3 directs you to answer the question proposed by counsel

4 as to who else was present at the meeting at the

5 hearing center.

6 A. I respectfully decline to answer, Your Honor, on

7 the basis of the Fifth Amendment.

8 BY THE COURT: Declining to answer, then the

9 Court finds that you're in violation of the Court's

10 order.

11 Q. How many other people were present?

12 A. I respectfully decline to answer on the grounds it

13 might tend to incriminate me and assert the Fifth

14 Amendment privilege.

15 MR. SMITH: Your Honor, again, this in no way

16 implicates his Fifth Amendment privilege. And we'd ask

17 that the Court order him to answer the question and

18 perhaps suggest that Mr. DeMoisey talk to him about

19 it.

20 MR. DEMOISEY: That won't be necessary. I

21 know the fondness of Mr. Smith to help me practice my

22 case, but that just will not be necessary. What

23 they're -- this is a different circumstance. There are

24 allegations now -- we're now moving to phase 37 of

25 their allegations where they are alleging some sort of

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1 conspiracy among a bunch of people to purchase
2 documents and all those sorts of things. And there
3 comes a point in line in order to stay consistent with
4 our position that we must draw the line, and we do so
5 respectfully with the Court.
6 BY THE COURT: All right. The Court directs
7 Mr. Williams to answer that question. You're still
8 refusing, Mr. Williams?
9 A. Yes, sir.
10 BY THE COURT: The Court finds Mr. Williams
11 in violation of the court order. Go ahead, please.
12 Q. How long did this meeting last?
13 A. I assert the Fifth Amendment privilege.
14 Q. As to how long the meeting lasted?
15 A. Well, I -- I don't know if I'm opening any doors.
16 May I consult with counsel on this? I assert the Fifth
17 Amendment privilege. As long as I assert it to one
18 thing, does it belong to another? I don't know.
19 MR. DEMOISEY: Your Honor, we do not want to
20 waive any questions. We're not trying to be -- we're
21 trying to answer the questions we believe fall
22 definitively outside the legitimate Fifth Amendment
23 claim. But under the very peculiar circumstances of
24 this case it is difficult to draw a line at best. And
25 now we're going to be talking about specifics, and we

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1 do not want to be in the position of being accused
2 later of having waived some and getting into those line
3 of cases that says if you waive some, now you've waived
4 it all.
5 MR. SMITH: Your Honor, we request that the witness be
6 ordered to answer the question, be held in contempt if
7 he does not.
8 BY THE COURT: Again, Mr. Williams, the Court
9 orders you to answer the question as to the length of
10 the meeting. Do you still refuse to answer that
11 question?
12 A. Yes, sir, Your Honor, respectfully decline to
13 answer.
14 Q. Was Mr. Barrett there?
15 BY THE COURT: The Court finds that he has
16 violated that order. Go ahead.
17 Q. Was Mr. Barrett there?
18 A. Again, I assert the Fifth Amendment privilege
19 based on the possibility of incriminating.
20 Q. Was Mr. Motley there?
21 A. Again, I assert the Fifth Amendment privilege.
22 MR. SMITH: We again, Your Honor, request that you
23 order the witness to answer.
24 BY THE COURT: Again, Mr. Williams, as to the
25 questions of whether or not Mr. Barrett and Mr. Motley

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1 were there, the Court directs you to answer those
2 questions. Do you still refuse to do so?
3 A. Respectfully decline to answer, Your Honor.
4 BY THE COURT: Okay. Again the Court finds
5 the defendant has violated the court order.
6 Q. What was discussed at the meeting at the Hearing
7 Loss Clinic?
8 A. The -- I would respectfully decline to answer the
9 question on the grounds of the Fifth Amendment
10 privilege. It might tend to incriminate me.
11 Q. Did you take any materials with you to the meeting
12 at the Hearing Loss Clinic?
13 A. I respectfully decline to answer on the grounds it
14 might tend to incriminate me.
15 MR. SMITH: Your Honor, with regard to the last two
16 questions, we request that you order the witness to
17 answer.
18 BY THE COURT: Again, Mr. Williams, the Court
19 directs you to answer the questions about the nature of
20 the discussions and whether or not you took any
21 material with you. Do you still refuse to answer those
22 questions?
23 A. Yes, Your Honor, I do respectfully.
24 Q. Did you give any --
25 BY THE COURT: The Court finds you violated

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1 that order.
2 Q. I'm sorry, Your Honor. Excuse me. Did you give
3 any materials to anyone at the meeting at the Hearing
4 Loss Clinic?
5 A. I assert Fifth Amendment privilege based on the --
6 based on the -- that it might incriminate me.
7 MR. SMITH: Again, Your Honor --
8 A. Decline to answer. Decline to answer the
9 question.
10 MR. SMITH: Again, Your Honor, we request an order.
11 BY THE COURT: Again, Mr. Williams, as to
12 whether or not you gave any material to anyone at that
13 meeting, do you still refuse to answer that question?
14 A. Yes, sir, I do.
15 BY THE COURT: Let the record reflect that
16 the Court finds that he has violated that rule.
17 Q. At that meeting in the Hearing Loss Clinic did you
18 agree to provide any materials to anyone at some later
19 time?
20 A. I respectfully decline to answer on the grounds of
21 the Fifth Amendment privilege that it might tend to
22 incriminate me.
23 MR. SMITH: Again, Your Honor, we ask for an order.
24 BY THE COURT: Again, Mr. Williams, the
25 question as to whether or not you agreed to provide

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1 material at a later date, are you still refusing to
2 answer that question?
3 A. Yes, Your Honor.
4 BY THE COURT: The Court finds that Mr.
5 Williams has violated that court order.
6 Q. Where is the Hearing Loss Center in Pascagoula?
7 A. It's on Jackson Avenue.
8 Q. And were the people participating in this meeting
9 the only people in the Hearing Loss Center?
10 A. I -- the question is not clear to me, but I
11 respectfully decline to answer on the grounds that it
12 might incriminate me. I don't understand the
13 question.
14 Q. I'm simply asking this. There were people meeting
15 with you, correct?
16 MR. DEMOISEY: He's already answered that
17 question by asserting the Fifth Amendment.
18 BY THE COURT: Mr. Williams indicated he had
19 trouble understanding the question. I think counsel
20 needs to restate it.
21 Q. Let me restate it. As I understand it, Mr.
22 Williams, there was a meeting where one or more persons
23 met with you at the Hearing Loss Center in April of
24 1994. My question is, were there people at the Hearing
25 Loss Center in addition to that person or persons

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1 meeting with you?
2 A. Well, I respectfully decline to answer on the
3 grounds that it might tend to incriminate me.
4 Q. The question is simply were there people at the
5 Hearing Loss Center who were not participating in your
6 meeting at the Hearing Loss Center?
7 A. I don't want to waive the privilege by answering
8 the question. Fox? I don't quite...
9 MR. DEMOISEY: I think the problem here is he
10 doesn't understand the question, the best I can tell.
11 Q. Mr. Williams, are you confused by my question?
12 A. Yes, sir, I am.
13 Q. All right. Well, let me ask it again. There were
14 people meeting with you at the Hearing Loss Clinic?
15 MR. DEMOISEY: Let me object to the form of
16 the question. He has specifically not answered those
17 questions. Now he's trying to predicate a question by
18 saying, 'well, we all know that there were other people
19 at this meeting'.
20 Q. Let me rephrase the question. May I? You have
21 testified that you met with Mr. Scruggs at the Hearing
22 Loss Clinic in April of 1994. And you have declined to
23 tell me whether there were other people meeting with
24 you and Mr. Scruggs at that time. My question is, were
25 there people who were at the Hearing Loss Center doing

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1 things totally unrelated to your meeting with Mr.
2 Scruggs?
3 A. Not that I know of.
4 Q. Or as you recall, the only people there were the
5 people meeting with you?
6 MR. DEMOISEY: Objection to the form of the
7 question.
8 Q. Is that correct?
9 BY THE COURT: Overruled the objection. You
10 may answer that, sir.
11 A. Yes. I would say so.
12 Q. Was the -- was this after hours? Was this a time
13 when the Hearing Loss Clinic was not otherwise open for
14 business?
15 A. I believe so.
16 Q. Was it at night?
17 A. No.
18 Q. In the morning?
19 A. I believe this was on a Sunday.
20 Q. On a Sunday.
21 A. In fact, it was on a Sunday.
22 Q. What time of day?
23 A. Morning, afternoon, little bit of both.
24 Q. How was this meeting arranged?
25 A. I have no knowledge of that.

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1 Q. How did you know to be at the Hearing Loss Clinic
2 on Sunday morning?
3 A. I have no knowledge of how it was arranged.
4 Q. What?
5 A. I have no knowledge of how it was arranged.
6 Q. How did you know to be at a meeting at the Hearing
7 Loss Clinic on a Sunday morning in April of 1994?
8 MR. DEMOISEY: Your Honor, I object to the
9 form the question. I mean, all we're trying to do is
10 get at this question every possible way in order to try
11 to get around the objections that we have made by now
12 trying to introduce some sort of waiver.
13 BY THE COURT: Well, apparently there is a
14 line of cases as far as federal grand juries are
15 concerned that once you answer one question, you have
16 to answer all of them if I'm correct. But I'm not
17 familiar with anything like that as far as our cases
18 are concerned here in state court. I mean, I don't
19 know of any other circumstances where that applies. If
20 you do, I'd appreciate being enlightened to it. I
21 mean, certainly if you answer the question 'did you
22 commit the burglary' one time you answer it, I think
23 you're precluding from answering it -- from asserting
24 the privilege later. But simply answering one questio
25 does not open the door to -- to every other question,

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1 i.e., it doesn't preclude you from asserting the
2 privilege at a later time --
3 MR. DEMOISEY: Well --
4 BY THE COURT: -- unless you know otherwise.
5 MR. DEMOISEY: Well, when you get back to the
6 case that has been cited, particularly the Young case,
7 which cites Hoffman versus United States, he is not
8 required to give information that can provide a link or
9 help, you see those words used, or that might be
10 dangerous or injurious disclosure. And what we're
11 trying to do is keep going around and around and around
12 and around until, you know, they can try to, by
13 circumstance, prove what they're now -- that -- that he
14 is asserting the Fifth Amendment, that he is not
15 required to answer. So now we're just going around and
16 around the circles with circumstance. It's the same
17 privilege. He is not required to answer these
18 questions where he has a reasonable prospect of being
19 charged with some sort of crime. Not convicted, just
20 charged. And they're -- that's all they're trying to
21 do. They're turning a civil discovery deposition into
22 a criminal discovery case. And that's improper,
23 particularly when my client is asserting the Fifth
24 Amendment. They're asking to give evidence against
25 himself in a contempt hearing. Now we're going to

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1 charge with him contempt of the contempt hearing.
2 MR. SMITH: Your Honor, if I may, the case is very
3 clear that we need to ask the questions, because if we
4 don't, if this is ever reviewed, guess what's going to
5 happen? We're going to come back down, and we failed
6 to ask this question. I asked it then, and they
7 interpose another objection, and we have to do it
8 again. We need to get the questions on the record. It
9 is one of the purposes the court came in here today to
10 do. It has nothing to do with the issue that Mr.
11 DeMoisey's raising. We need to get these questions on
12 the record first. Second, there are clear line of
13 cases that say participants, people who are at the same
14 place at the same time at a meeting, that fact is not
15 incriminatory. Secondly, the fact of a meeting is not
16 incriminatory. The date couldn't possibly be
17 incriminatory in and of itself. It's not the thing to
18 which a Fifth Amendment plea is allowed. So I need to
19 ask the questions. We've been wasting a lot of time
20 with argument, and I think we need to get back to the
21 questions.
22 MR. DEMOISEY: If I may respond, just -- I've
23 heard the word now used verbally in some of their
24 statements in other courts, what -- not that there is a
25 conspiracy ongoing. Well, how do you prove a

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1 conspiracy? The presence of other people. And what I
2 have a problem with is every time we try to pin down
3 Brown & Williamson, what are you really saying, what
4 theft, what are you really, they never really exactly
5 ever say. They always take the advantage of, well,
6 we've got, you know, it depends upon their point of
7 view whether they care if he's specific or not. Right
8 now I'm having to guess what their imaginations will
9 come up with. Conspiracy comes to mind. I've heard
10 them say it. Extortion has come to mind. I've heard
11 them say it. Theft has come to mind. You know, and I
12 have a problem trying to advise my client with the
13 Fifth Amendment with this nebulous potpourri of
14 possibilities that they pick and choose from whenever
15 it suits their fancy. And I'm sorry if I'm having
16 problems sorting through all of this dust, but it is a
17 problem, because they never articulate anything
18 purposefully. And when you make a suggestion to you,
19 here's how you solve the problem, go get the
20 Commonwealth Attorney do this, do that, they pass by
21 that. I'm always the one having to pay the price for
22 it. I'm getting tired of it.
23 BY THE COURT: First of all, I respectfully
24 disagree, Mr. Fox, with your analysis. As I already
25 indicated, I think he should be required to answer

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1 these questions. But secondly, whether he answers the
2 or not, the questions under these cases do need to be
3 proposed for appellate review. If, in fact, you're
4 concerned about waiver, it seems to me at the moment he
5 answered that he and Mr. Scruggs met at the Hearing
6 Loss Center at a date he can't quite remember, then he
7 would have waived any subsequent objections. Again, I
8 don't think that's true. But if that was your real
9 concern, then he shouldn't have answered the first
10 question. But as it is, I think these questions do
11 need to be asked. He may refuse to answer them, and
12 we're just making a record of it at this time and for
13 subsequent appellate review. So the question before
14 you at this time, Mr. Williams, is how were you
15 notified about this meeting that took place. As I
16 understand it, you're refusing to answer the question.
17 Again the Court directs that you answer it. Do you
18 still refuse to answer it at this time?
19 A. I respectfully decline to answer on the ground of
20 the Fifth Amendment privilege.
21 BY THE COURT: All right. Let the record
22 again reflect that the witness has violated the Court's
23 ruling. Go ahead.
24 Q. Mr. Williams, you have testified that you had met
25 -- that you met with Mr. Scruggs at Irv's Deli and at

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1 the Hearing Loss Center. What other meetings have you
2 had with Mr. Scruggs?
3 A. Respectfully decline to answer on the grounds of
4 the Fifth Amendment privilege.
5 MR. SMITH: Your Honor, the witness has already
6 testified as to two meetings, one testified after
7 consultation with counsel. Now he's refusing to talk
8 about subsequent meetings. And I think he should be
9 ordered to do so and held in contempt if he refuses.
10 MR. DEMOISEY: Your Honor, there's a classic
11 example. I was held to the fire because, oh, the case
12 law, you know, there's nothing incriminating about a
13 meeting. Certainly he has to testify. We go outside.
14 We come back. He says there is a meeting. Now it's a
15 waiver.
16 MR. SMITH: I didn't say that.
17 MR. DEMOISEY: If he can say one, he can
18 testify about the other.
19 MR. SMITH: I say he's taking a different legal
20 position, Your Honor. The legal position shouldn't
21 change. If he testifies about one, the legal position
22 should be the same. He's taking an inconsistent legal
23 position. I don't believe I ever said anything about
24 waiver.
25 BY THE COURT: I think maybe I suggested tha

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1 because that would seem to be your concern, Mr.
2 DeMoisey, that he might waive any Fifth Amendment
3 protections that he has by answering any of these
4 questions. So he continues to assert them in all
5 cases, which concerned me, because I don't think that
6 under these cases that that's what anticipated that
7 there might be some legitimate concerns and that he
8 would assert the right under those situations. Other
9 times he would speak and be forthright. But in any
10 event, again, I believe the question needs to be asked
11 for purposes of review. And, Mr. Williams, the
12 question was whether or not you had any other meetings
13 with Mr. Scruggs besides this last one that you've just
14 described. Do you still refuse to answer that
15 question?
16 A. Well, okay. The -- if I have to answer -- I'm not
17 sure about the waiver.
18 MR. DEMOISEY: You can decline if you wish.
19 A. I decline to answer, Your Honor, on the grounds of
20 Fifth Amendment privilege.
21 BY THE COURT: Let the record again reflect
22 that the Court finds that Mr. Williams has refused to
23 answer as directed by the Court.
24 Q. Mr. Williams, the woman who was present at your
25 meeting at Irv's Deli who you thought was with Mr.

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1 Scruggs, did you ever see her again after that?
2 A. No, I didn't.
3 Q. You've never seen her to this day?
4 A. No, I have not.
5 Q. I believe I asked you if you had provided any
6 materials or promised to provide any materials at the
7 meeting at the Hearing Loss Clinic. My question now is
8 a general question. Have you ever provided documents
9 or other materials subject to the Court's temporary
10 injunction to Mr. Scruggs?
11 A. I respectfully decline on the grounds that it
12 might tend to incriminate me and assert the Fifth
13 Amendment privilege.
14 MR. SMITH: We request, Your Honor, that you order the
15 witness to answer.
16 BY THE COURT: Again, Mr. Williams, the Court
17 directs you to answer the question concerning the
18 materials to Mr. Scruggs. Do you still refuse to do
19 so?
20 A. Respectfully I decline to answer, Your Honor.
21 BY THE COURT: Let the record reflect again
22 that the witness has refused to answer that question.
23 Q. Mr. Williams, have you ever provided any of the
24 materials subject to the temporary injunction to
25 anyone?

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1 A. I assert the Fifth Amendment privilege.
2 MR. SMITH: Your Honor, we request that you order the
3 witness to answer.
4 BY THE COURT: Okay. Again, Mr. Williams, as
5 to the question of whether or not you ever supplied
6 this information or material to any other parties after
7 the injunction was entered by the Court, do you still
8 refuse to answer that question?
9 A. Respectfully decline to answer, Your Honor.
10 BY THE COURT: Again, the Court finds that
11 Mr. Williams has violated the order to answer that
12 question.
13 Q. In the Sunday, April 9 edition -- April 9, 1996,
14 edition of the Courier -- Louisville Courier-Journal --
15 BY THE COURT: The Courier-Journal's good. I
16 don't think they're that good, though.
17 Q. I'm sorry. '95. Looks like a six. '95. That
18 would be hard. In the Sunday, I believe it's April 9,
19 1995, edition of the Louisville Courier-Journal, Greg
20 Otolski states that he interviewed you at one of your
21 favorite gulf coast haunts. Have you met and provided
22 an interview to Greg Otolski?
23 A. That question has been asked and answered. I'm
24 not trying -- I did meet. I told you I did meet him.
25 And as to the verbiage, my favorite haunts, I don't

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1 know. That's his characterization.
2 Q. Have you reviewed the article from the Louisville
3 Courier-Journal that I'm referring to?
4 A. You brought it up at the last deposition, yes.
5 Q. Have you read it?
6 A. Yes.
7 Q. Do you find anything in it to be factually
8 incorrect?
9 A. A lot.
10 MR. DEMOISEY: Objection to the form of the
11 question.
12 BY THE COURT: I think we need to be a little
13 more specific, Mr. Smith.
14 Q. Could we go off the record for just a minute? I
15 don't want to waste the tape.
16 VIDEOTAPE OPERATOR: We'll go off the
17 record.
18 (COMMENTS OFF THE RECORD)
19 Q. All right we'll go back now.
20 VIDEOTAPE OPERATOR: We're back on the
21 record.
22 Q. Mr. Williams, in your interview with Mr. Otolski
23 did you discuss your work at Wyatt, Tarrant & Combs on
24 behalf of Brown & Williamson?
25 A. I don't -- I don't recall discussing anything

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1 specific other than what was public knowledge. There
2 is -- there are quite a few inaccuracies in that piece
3 as I remember.
4 Q. Well, when you say that were not public knowledge,
5 that was based on your recollection of what was public
6 and what wasn't?
7 A. Published in the newspapers, yes.
8 Q. You did talk about tobacco litigation?
9 A. I don't remember what I talked about.
10 Q. You don't remember what you talked about?
11 A. Not that he says, no. And I think if you be
12 specific, I can tell you if I said something or I
13 didn't.
14 Q. In your interview with Mr. Otolski, he states that
15 you declined to explain to him how you obtained a
16 house, two cars and a boat when you were out of work
17 and nearly penniless. Is that true?
18 MR. DEMOISEY: May I ask for a clarification
19 of the question? Is the fact that he declined to
20 discuss it true or are the statements in this question
21 true?
22 Q. The first question is, is it true that you told
23 that to Mr. Otolski as he reported?
24 A. As Mr. Otolski wrote this piece, what he said and
25 what was written, what you're saying may -- I don't

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1 recall discussing it, but I also don't recall calling
2 myself a hero or any of the others. Mr. Otolski, if I
3 can clarify this a little bit, was there in this, as he
4 points out in that, for approximately three and a half
5 hours he was talking with me. We were talking about
6 various things. And Mr. Otolski points out also that I
7 was drinking a Coke, several of them and that he was
8 drinking three beers. And then he says he wrote his
9 report or he wrote his news story after he went home.
10 And that was probably at eleven o'clock at night. I
11 seriously doubt that he remembers everything. He says
12 that I took notes. I didn't take any notes. He says
13 that he didn't take any notes, and yet he writes the
14 story, and it's suddenly completely accurate. That's
15 your understanding. It's the same with other articles
16 that have appeared. I've never discussed documents.
17 I've never discussed anything that was on the record in
18 terms of what was for this Court an order with Mr.
19 Otolski. I -- I don't recall what I said, but at that
20 time Mr. Otolski was not in any good shape to write a
21 story that was completely accurate.
22 Q. You thought he was under the influence of alcohol?
23 A. Well, he certainly was. He had three beers. I
24 didn't. I mean, that's under the influence, I would
25 say. He might not have been completely.

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1 Q. What leads you to believe he wrote the story that
2 night?
3 A. He told me.
4 Q. Told you later?
5 A. It's in that article, I believe. That's what I
6 think.
7 Q. Is that the only interview you've given to Mr.
8 Otolski?
9 A. Yes.
10 Q. Have you given an interview to Michael Orey?
11 A. Yes, I have.
12 Q. How many times did you meet with Mr. Orey?
13 A. I met with Mr. Orey on one occasion. He was
14 writing a story for the American Lawyer. And we met at
15 -- I don't remember the date. But it was before July
16 1st or somewhere. Whenever the issue came out.
17 Q. Mr. Orey reports in there that at a meeting in
18 April you gave Mr. Scruggs a box of documents. Is that
19 true?
20 A. That's what he says. I did not say that.
21 Q. Is it true that you gave a box of documents to Mr.
22 Scruggs in April?
23 A. I refuse to -- to answer on the grounds that it
24 might incriminate me. Mr. Orey says that. He writes
25 it. I refuse to answer on the grounds that it might

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1 tend to incriminate me. Assert the Fifth Amendment
2 privilege.
3 MR. SMITH: We request that you order the witness to
4 answer that question.
5 BY THE COURT: Let me ask two questions. Ho
6 do you spell Michael Orey's last name?
7 MR. SMITH: O-R-E-Y.
8 BY THE COURT: And my second question is, ar
9 you asking him whether or not he made that statement t
10 Mr. Orey he's refusing to answer, or whether or not, i
11 fact, he gave Mr. Scruggs the box of documents and he'
12 refusing to answer?
13 MR. SMITH: I thought I had asked both questions.
14 A. Well, on both questions I would take the Fifth
15 Amendment, because I -- that's an impression of a
16 writer who says something. And I would take the Fifth
17 Amendment on that. I would assert the Fifth Amendment
18 privilege. So both answers would be to the Fifth
19 Amendment privilege. If you follow me, I'm asserting
20 the Fifth Amendment privilege to both questions --
21 BY THE COURT: Okay.
22 A. -- on the grounds that it might tend to
23 incriminate me.
24 BY THE COURT: Mr. Williams, you made mentic
25 of the writer's impression. Do you understand the

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1 question is not what Mr. Orey thought but rather what
2 did you tell Mr. Orey and what did you do as far as Mr.
3 Scruggs is concerned as to the box of documents? Do
4 you understand that's what they're asking about?
5 A. If that is the question and I can understand it
6 that way, I did not tell Mr. Orey that. And on -- I
7 did not say that to Mr. Orey.
8 Q. And the second question is, did you, in fact, give
9 a box of documents to Mr. Scruggs in April of 1994?
10 A. I would assert the Fifth Amendment privilege based
11 on the grounds that it might tend to incriminate me.
12 Q. Your Honor, we'd ask that you order the witness to
13 answer that.
14 BY THE COURT: All right. Then, Mr.
15 Williams, as to the second question, the Court directs
16 that you should answer whether or not you gave Mr.
17 Scruggs a box of documents. Do you still decline to
18 answer that question?
19 A. Yes, sir, I respectfully do.
20 BY THE COURT: All right. Let the record
21 reflect that he again has violated a court order.
22 Q. Mr. Williams, have you ever talked to or met a
23 gentleman named Stanton Glantz, G-L-A-N-T-Z?
24 A. No.
25 Q. Have you ever met or talked to Richard Daynard?

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1 A. Yes, I have.
2 Q. When was that?
3 A. That would be under the attorney-client privilege.
4 Q. When did you talk to him? That's not privileged.
5 A. He was my lawyer.
6 Q. At what time?
7 A. Sometime in a period 1992, I think. I think it
8 was 1992. On a specific issue.
9 Q. And have you personally met Richard Daynard?
10 A. Again, I -- the meeting of Mr. Daynard, yes, I
11 have met him.
12 Q. Personally and not just by telephone?
13 A. Yes, I've met him.
14 Q. And where -- where did you meet him?
15 A. I met him in Florida.
16 Q. Did he represent you in connection with some
17 litigation?
18 A. He represented me in litigation, yes.
19 Q. What case?
20 A. Oh, I'm sorry. In litigation in the -- in
21 possible litigation.
22 Q. In the state of Florida?
23 A. No.
24 Q. Have you provided any materials to Mr. Daynard?
25 A. I would take the Fifth Amendment, assert the Fift

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1 Amendment on the ground that it might tend to
2 incriminate me.
3 MR. SMITH: We request that you direct the witness to
4 answer the question.
5 MR. DEMOISEY: Judge, out of an abundance of
6 caution, it may also involve an attorney-client
7 privilege. I don't know that it does, but it might.
8 A. I would assert that it does, I mean, based on my
9 knowledge.
10 BY THE COURT: Okay. Are we talking again
11 about materials subsequent to the Court's order of
12 January 7?
13 Q. Yeah. Let me clarify the question, Your Honor.
14 Have you provided to Richard Daynard any materials
15 subject to the Court's January 7, 1994, restraining
16 order?
17 MR. DEMOISEY: When? Before or after?
18 Q. Well, it wouldn't have been subject to it if it
19 had been before.
20 MR. DEMOISEY: I'm not sure about
21 interpretation.
22 Q. So it would have been after.
23 MR. DEMOISEY: Can I ask for a
24 clarification? Are we talking about -- is he asking
25 about a potential event that occurred after the

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1 issuance of the order?

2 BY THE COURT: After.

3 Q. Fox, you pointed something out to me. That's

4 good. Let me withdraw the question. You say you met

5 with Mr. Daynard in 1992, correct?

6 A. I think it was 1992.

7 Q. Have you met with him since 1992?

8 A. No.

9 Q. Have you provided to Mr. Daynard any documents

10 that came -- that the originals or that you got copies

11 originally from Wyatt, Tarrant & Combs or Brown &

12 Williamson?

13 A. No.

14 Q. Let me make sure that I stated that question

15 clearly. When you -- at any time have you provided to

16 Richard Daynard any information or materials which you

17 got while you were employed at Wyatt, Tarrant & Combs

18 on behalf of Brown & Williamson?

19 A. My information would be in my head, the basis. I

20 would decline to answer on the grounds of the Fifth

21 Amendment privilege and assert that.

22 MR. SMITH: I'd ask that the witness be ordered to

23 answer, Your Honor.

24 BY THE COURT: All right.

25 MR. DEMOISEY: Your Honor, I would -- would

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1 -- on this particular question I have a question of
2 relevancy. If this is supposed to be about getting,
3 gathering information and evidence to support a
4 criminal contempt violation and the only evidence I've
5 heard is things that happened a year and a half to two
6 years prior to the order, what possible relevance does
7 that have to the issue before this Court?
8 BY THE COURT: Mr. Smith?
9 MR. SMITH: Your Honor, that -- the question started
10 out 1994, but it turns out he had met earlier. There
11 maybe an ongoing relationship. And if he'd given him
12 documents earlier that then became subject to your
13 order, he may have had to -- tried to get them back. I
14 don't know. I've got to get into that. So it's a
15 predicate for coming forward to know what their
16 relationship was. I think it's a fair area to start
17 out in to get to where we need to get to.
18 BY THE COURT: Well, I mean, the Court
19 understands that any material -- if any material was
20 given to Mr. Daynard prior to the Court's order, that
21 would not be a violation of that order. Of course,
22 depending upon how that material was given to him, I
23 mean, if it was as a trustee or some, you know, someho
24 that he was to control that material and then
25 subsequent to the order he authorized the release of

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1 it, it may be relevant, because I think the order went
2 through that neither Mr. Williams nor any of his agents
3 may release that material. If, in fact, that's the
4 situation, I think it's relevant. So you may lay the
5 groundwork for that question. Go ahead, sir. Again,
6 Mr. Williams, the Court directs you to answer the
7 question about whether or not since your meeting with
8 Mr. Daynard in 1992 you gave him any materials that are
9 subject to this litigation.
10 A. Materials.
11 Q. Materials or information, Judge.
12 A. Or information. Well, I -- I had an
13 attorney-client relationship with him at one point.
14 And I certainly gave him information in my head. And
15 that I think would be privileged. I don't know. So I
16 don't think I have to take the Fifth Amendment on
17 that. But I'm not sure I do. But I did have an
18 attorney-client privilege. I have a relationship with
19 him.
20 Q. Was there a written employment agreement with Mr.
21 Daynard?
22 A. No. Just consulted.
23 Q. Was he -- was he retained by you?
24 A. Yes. We had a relationship, attorney-client
25 privilege.

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1 Q. And did you pay him?
2 A. Well, no, I didn't pay him, but there was an
3 understanding. He's -- he's a teacher at
4 Northwestern --
5 Q. All right. And he's --
6 A. -- law school.
7 Q. He's the head of a tobacco liability project
8 that's goal is to -- is to encourage litigation against
9 tobacco companies, correct?
10 A. Well, he's also a -- I would say that he gathers
11 and he's a publisher and he publishes litigation
12 magazine. And he's also on the board of Stop Teenage
13 Addiction To Smoking, which is an advocacy group for
14 preventing smoking among our young persons.
15 Q. Have you met or talked to Mr. Daynard since 1992?
16 A. Yes.
17 Q. When was the last?
18 A. I don't remember. I -- I really don't.
19 Q. He's not representing you now as a lawyer, is he?
20 A. No.
21 Q. When did that relationship cease?
22 A. In '92.
23 Q. And how long did the relationship last?
24 A. Depends on what you -- what you're talking about.
25 Are you talking about writing a brief or something lik

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1 that?
2 Q. You've stated, Mr. Williams, that you had an
3 attorney-client relationship --
4 A. I did.
5 Q. -- with Mr. Daynard that began and ended sometime
6 during the year 1992. And my question is, did it last
7 a month? Did it last --
8 A. A month.
9 Q. -- a day? About a month?
10 A. About a month, yeah.
11 Q. When in 1992?
12 A. I don't remember exactly. It was after I left the
13 employment at Wyatt.
14 Q. Now, have you talked to or met with Richard
15 Daynard since the attorney-client relationship ceased?
16 A. I don't recall. I -- I think that... hmm. I'm
17 sure I talked with him, but I don't remember when. I
18 mean, on the phone.
19 Q. After -- after 1992?
20 A. Yeah. We were -- yeah. We were -- yeah.
21 Q. What did you talk about?
22 A. The -- there was no question in my mind that I
23 have very strong feelings about preventing the use of
24 tobacco especially in --
25 Q. Your Honor, I object. This is not responsive.

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1 A. I talked with Mr. Daynard about the development of
2 the student -- the young -- the STAT work about
3 possibly starting a film group to help high school
4 students. I -- I particularly -- I have two
5 daughters. One's 18 -- 17, and one's 15. I'm
6 particularly concerned about the youth. And that
7 particular organization STAT is extremely important
8 toward that prevention of another generation of
9 children being taken away from us.
10 Q. Did you talk to -- have you ever talked to Richard
11 Daynard after you ended your attorney-client
12 relationship in 1992 about Brown & Williamson or
13 information that you learned while working at Wyatt,
14 Tarrant & Combs?
15 A. There's nothing specific that I would talk to Mr.
16 Daynard about about Brown & Williamson. I perceived
17 several -- well, first of all, the connection between
18 the Stop Teenage Addiction To Smoking is an advocacy
19 group. And --
20 Q. Mr. Williams, I've asked you a simple question.
21 A. Yeah. I know.
22 Q. And you're making a speech now. The question was
23 have you ever outside of the attorney-client
24 relationship discussed anything that you learned while
25 you were working for Wyatt, Tarrant & Combs on behalf

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1 of Brown & Williamson?
2 A. Yes, sir, I have. Farmers Insurance.
3 Q. You talked to Mr. Daynard about Farmers Insurance?
4 A. Yes, sir.
5 Q. What was that discussion?
6 A. Well, in 1989 the BAT mother company was making a
7 hostile takeover of Farmers Insurance.
8 Q. Mr. Williams, I don't need an explanation. I want
9 to know what you told Mr. Daynard.
10 MR. DEMOISEY: Your Honor, may I ask Mr.
11 Smith not badger the witness.
12 MR. SMITH: I apologize, Your Honor.
13 BY THE COURT: He has a right to explain his
14 answer. He's giving a little background information
15 about what they discussed. Go ahead.
16 A. The crux or the crucible of this alliance with BAT
17 had to do with two issues. One was biological research
18 at B&W or BAT done biological research. And the second
19 part was the -- had there been any kind of risk
20 assessment of the potential to the Farmers Insurance
21 stockholders. In the time frame that I was working for
22 Brown & Williamson I was very concerned that we had a
23 document pool which basically was sent to the firm,
24 which was King & Spalding. And they were doing the
25 litigation work in California and in other places. An

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1 the answers to the judges were not accurate. And the
2 document pull was in effect to perpetuate a takeover of
3 the insurance company, and it did take them over.
4 And the -- the I guess the part that upset me
5 and I discussed most with him was the fact that -- that
6 King & Spalding was assigned the biological research
7 part of the -- the study while they were getting
8 documents from Brown & Williamson -- I mean, from
9 Wyatt, Tarrant & Combs to be sent over there. And the
10 two lawyers that I remember who were involved in the
11 advocacy of the takeover of the -- the denial of
12 discovery were from the King & Spalding firm.
13 Q. Was this discussion with Richard Daynard before or
14 after the entry of the preliminary injunction in this
15 case?
16 A. Oh, it was before.
17 Q. But after your termination by Wyatt, Tarrant &
18 Combs?
19 A. Yes.
20 Q. So you just hauled off and violated your
21 employment agreements with Wyatt, Tarrant & Combs and
22 talked to Professor Daynard about information you
23 learned while a paralegal at Wyatt, is that right?
24 A. If I may explain.
25 MR. DEMOISEY: Objection to the form of the

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1 question.
2 MR. SMITH: No, no.
3 MR. DEMOISEY: Because they have never been
4 able to produce the contract that has -- that was
5 signed attesting to this confidentiality, number one.
6 Number two, no court will seem to be -- address the
7 question as to the applicability of rule 1.6 as to
8 whether he could discuss it or not. They've never
9 addressed the question as to whether there was
10 privilege applicability to this or not under the old
11 Lidmore rule since we do not have one under the
12 Kentucky rules of evidence. And most particularly I --
13 well, that's good enough. I'll stop there.
14 A. What was the question again, please?
15 Q. You went to Professor Daynard after you were
16 employed by Wyatt --
17 BY THE COURT: Hold on just a second. In
18 light of that objection, Mr. Smith, is there anything
19 you wish to say at this point?
20 MR. SMITH: No, sir, Your Honor.
21 BY THE COURT: Court directs the witness to
22 answer the question. Go ahead.
23 A. Would you repeat the question, please?
24 Q. Yes, sir. You were employed by Wyatt, Tarrant &
25 Combs and you were working under a confidentiality

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1 agreement or agreements. And yet after leaving the
2 employment of Wyatt, Tarrant & Combs, you went and
3 revealed confidences to Professor Daynard, didn't you?
4 A. No, sir I didn't. The way I viewed it, the
5 hearings, which were held in California, Idaho and/or
6 Iowa or various places, I got a press package. And --
7 Q. From whom?
8 A. From, I think, Richard Daynard, which was during
9 the takeover period of 1989, the summer, and since we
10 were pulling documents to assist in the two things that
11 were obviously an ongoing fraud on the stockholders or
12 as I saw it. And Mr. Smith, I believe you were in --
13 you were -- you were the main litigator in there or
14 with Shook, Hardy & Bacon. I'm not sure. But the
15 other name I remember is Frank Jones. I'm not sure. I
16 became very concerned. And I -- I had the press
17 package. And I had the information, and it was all
18 very public. Now, my concern was that it was an
19 ongoing fraud that, one, King & Spalding was doing the
20 biological research. They were telling the people that
21 they weren't. They were not doing biological research,
22 that BAT never did biological research, that B&W didn't
23 do any. There was no attempt to. It was to me public
24 knowledge through the press package. Now, whether I
25 was using my head, my knowledge and looking at a

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1 contract that you haven't presented us, Fox pointed
2 out. There is an exception that says an ongoing fraud.
3 Q. So you just decided that your contract didn't have
4 to be complied with?
5 A. I felt -- I felt strongly that I had a -- that the
6 -- the feeling of an order or if I was ordered by a
7 Court to respond or that the public had an interest,
8 and they did in this particular case. This was an
9 ongoing --
10 Q. You just decided that your contract wasn't valid.
11 So you could talk to Professor Daynard to your heart's
12 content?
13 A. Why don't-- I've seen three --
14 MR. DEMOISEY: Hold on, Merrell. Objection.
15 Argumentative. That doesn't have anything to do with
16 discovery. This is just preaching and from somebody
17 that who was head of litigation that was doing this.
18 MR. SMITH: That's not true, either. But you certainly
19 didn't know that. You shouldn't make allegations that
20 you don't know, Fox.
21 A. I can -- if -- the documents were in California.
22 BY THE COURT: Restate the question.
23 A. I'm sorry.
24 Q. I will restate the question. Mr. Williams, you
25 just decided that you didn't have to comply with your

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1 ethical obligations or contractual obligations to
2 maintain Wyatt, Tarrant and Brown & Williamson's
3 confidences, correct?
4 A. In this case that was an ongoing fraud.
5 Q. May I ask the question again? Is it correct that
6 you just decided that you didn't have to comply with
7 your ethical obligations and your contractual
8 obligations to Brown & Williamson, correct?
9 A. I had read -- I'm going to be responsive to your
10 answer, I hope. I had read Judge Starican's opinion,
11 and I was of the opinion that this press package was a
12 significant matter. And since I have been involved in
13 the actual document pull and I knew that the parties
14 involved were actually, in a layman's opinion, because
15 I wasn't acting as a lawyer, but I understood that they
16 were taking the company over, they were taking Farmers
17 over, that there were documents that existed out there
18 that said that they did do a risk assessment, and if
19 they ever lost a case, they would -- they would lose
20 money. And the second part of that was that they
21 didn't do biological research, and that bothered me
22 most because I knew that at that time the research was
23 being done on the documents by King & Spalding.
24 Q. All right. I'm going to ask the question again.
25 I'd like you to answer the question.

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1 A. Okay.
2 Q. The question is, is it correct that you simply
3 decided that you didn't have to comply with your
4 ethical obligations or contractual obligations and you
5 could talk to Mr. Daynard about information you learned
6 at Wyatt, Tarrant & Combs?
7 A. I was sick about this. I really was.
8 Q. Can you answer that question yes or no?
9 A. Well, in the first place I will say this. Your
10 contracts are not here before me. I've looked at the
11 blank contracts. The employment contract that I
12 originally referred to, I have considered the one that
13 has the rather large -- my hand, and I -- I have come
14 down to the opinion that that was a meeting held at
15 Wyatt, Tarrant & Combs where everybody was signing a
16 piece of paper to have attended this lecture on the
17 SEC. That's -- that's the only thing that I can
18 account for that that would have been. And the second
19 document that was produced was from the manual to the
20 full-time employees. And I was a temporary employee.
21 And I never saw the manual. I was never given the
22 manual.
23 Q. Mr. Williams --
24 A. The third one, if I may, the third one which has
25 not been signed, I have no signed document, the

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1 security aspect of it. Someone said that I've taken
2 it. But I -- I don't have a copy of this. I don't
3 know if I signed it. If you can show me that I signed
4 it, I'll agree to it. Even if I had and if you showed
5 it to me, you showed me a blank one at the injunction
6 following the -- I mean, the deposition following the
7 injunction, showed me a blank one. And I truly could
8 not recognize this except they had the -- they were
9 around the room in various places at -- on the second
10 floor. There was not a lot of -- I mean, they were
11 just sitting around. So even if that document were
12 produced, there's a section in there which says if you
13 are ordered or, you know, if you're ordered by court.
14 So I -- I -- the -- the thoughts that I had about this
15 particular problem, the Farmers Insurance did bother
16 me.
17 Q. Mr. Williams --
18 A. I don't think I was violating any contracts.
19 Q. Mr. Williams, you -- no court ordered you to talk
20 to Mr. Daynard and reveal the confidences of your
21 client, did it?
22 A. I didn't reveal any confidences. They were all
23 public knowledge, the case you referred to, the one
24 that your name is involved in in California.
25 Q. Did you talk to Mr. Daynard about the documents

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1 that you were pulling?
2 A. I don't believe that specifically I said that,
3 because I -- this was an afterthought. And if I, you
4 know, I don't know whether I can talk about it because
5 it appears in this narrative to some extent. I don't
6 know whether I can talk about it, because I don't know
7 what this procedure is exactly. But I did become very
8 concerned about that, and the roles that the lawyers
9 were playing, particularly in the active litigation,
10 not to defend but to take over.
11 Q. Mr. Williams, you went to Mr. Daynard because you
12 wanted to tell him things that you knew from working at
13 Wyatt that he didn't know?
14 A. No. He knew them.
15 Q. He didn't know what documents you were pulling or
16 not pulling at Brown & Williamson.
17 A. Well, I -- I don't think we -- we discussed that
18 particular aspect.
19 Q. Well, if Mr. Daynard knew it all, you didn't need
20 to talk to him about it?
21 A. No, no. What I'm saying is in the time frame, the
22 -- I -- my interest was piqued by the fact that I had
23 the press package, and I read these documents. And
24 they were from the hearings over in California and
25 Indiana and wherever. And then I put together the fac

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1 that King & Spalding was doing the biological research
2 and not producing the documents that were requested of
3 the courts.
4 Q. And you were telling Mr. Daynard about this?
5 A. No. I didn't tell him about that. I put this
6 together and this is -- if I'm allowed to say, it's in
7 that particular package.
8 Q. Is it your testimony that you sought out Mr.
9 Daynard after you read the press package about Farmers,
10 and you didn't talk about anything that you learned at
11 Wyatt, Tarrant & Combs?
12 A. I didn't talk about the -- any of the -- I -- I
13 don't even think I mentioned the -- because it has
14 occurred to me since then in the narrative I do talk
15 about Farmers Insurance, if I can say that. I don't
16 know in this case. But since this record is sealed, I
17 guess it is. The -- the thought that we were pulling
18 documents for an ongoing takeover was not defending
19 litigation. It was not pending litigation. It was
20 litigation which was mainly disguised so that nobody
21 could get to the discovery. Now, that thought occurred
22 to me not too long ago. And I don't think it's in the
23 narrative. The fact that your name appears in there
24 and your firm concerned me as well.
25 Q. Mr. Williams --

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A. Those came to me after. I didn't discuss those with Mr. Daynard.

Q. So you had -- you were concerned after reading the press package about Farmers, and you called Mr. Daynard. You didn't talk about anything that you knew from Wyatt. Is that your testimony? If it is, we'll go on.

A. In '92 it was. Yeah.

Q. What about later?

A. Later, same thing.

Q. You've never talked to Mr. -- you never told Mr. Daynard any information that you learned while you were at Wyatt?

A. Not except in the case of the attorney-client privilege. And that was very minor.

Q. Now, just so we don't have a -- mischaracterize your role, you never attended any Farmers hearings, did you?

A. I read all of them.

Q. You never attended any, did you?

A. No.

Q. You never saw any order directing Brown & Williamson or BAT to produce documents that weren't produced, did you?

A. The orders that I saw, obfuscated the court's

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1 orders.
2 Q. You never saw an order directing Brown &
3 Williamson or BAT to produce documents that weren't
4 produced, did you?
5 A. Well, there was a particular case in California
6 where the -- the discovery was blocked by Shook, Hardy
7 & Bacon and by King & Spalding, lawyers who wanted to
8 interview a S. N. Green. This is a public document
9 that was in the press package. And when the -- when
10 the blocking comes in is basically the denial. I
11 didn't see an order as such, but I did see denials in
12 depositions. I did see denials by Sir Patrick Shahee
13 and by one of the officers of BATUS.
14 Q. Okay. I've asked this question.
15 A. So it's the same thing.
16 Q. I've asked this question twice. I'm going to ask
17 it one last time. I'm going to ask this one last
18 time. Are you aware of Brown & Williamson or BAT
19 failing to produce anything that they were directed to
20 produce in any Farmers proceedings?
21 A. Yes, sir.
22 Q. You are. And what is that?
23 A. The truth.
24 MR. DEMOISEY: Your Honor, asked and
25 answered.

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1 He hasn't answered it yet.

2 MR. DEMOISEY: He's answered it three times

3 that he saw orders and he believed they were not

4 complied with.

5 Q. He's never said that.

6 A. I will say this, that the biological research was

7 asked for. It was denied in depositions, and so was

8 the risk assessment. It was asked for. And it was

9 denied in depositions. Depositions of officers of both

10 BAT and by BATUS, and Brown & Williamson was the

11 company that was necessarily the one that would be

12 connected in between.

13 Q. In between?

14 A. Well, the corporate development, as I recall, is

15 something along the lines of you set up a Delaware

16 corporation in order to proceed to take over. This is

17 not really fresh on my mind.

18 Q. B&W wasn't a party to any of the Farmers

19 proceedings?

20 A. Oh, yes they were. The point of the risk

21 assessment was --

22 Q. Let me. No, no.

23 A. -- if we lost in litigation, who would pay.

24 Q. The question was --

25 A. Widows and orphans.

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1 Q. -- B&W wasn't a party to the Farmers proceedings,
2 was it?
3 A. Not an official party. I would say that they did
4 own BATUS.
5 Q. Now, your role in this was to pull documents that
6 you were directed to pull by lawyers, right?
7 A. I recall later on, yes.
8 Q. Your only role in the Farmers litigation -- or
9 Farmers dispute was that you were the paralegal who
10 when told to go get a document, you went and got the
11 document, right?
12 A. Well, now that I recall, yes, that is true. I was
13 told by the Wyatt.
14 BY THE COURT: Mr. Smith, we probably need to
15 take a couple minutes for the Court Reporter.
16 MR. SMITH: That's fine, Your Honor. That's a good
17 time.
18 VIDEOTAPE OPERATOR: We'll go off the
19 record.
20 (SHORT RECESS)
21 VIDEOTAPE OPERATOR: We're back on the
22 record.
23 BY THE COURT: Question.
24 Q. Mr. Williams, have you ever given --
25 MR. DEMOISEY: Excuse me. Are we -- we're

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1 continuing on?

2 BY THE COURT: I -- Mr. DeMoisey, I can't

3 find anything in -- that would allow us to stop at mid

4 question, midstream and not protect the record from the

5 plaintiff's point of view. And that's what I'm still

6 trying to find. And if you know of any -- any case,

7 anything at all that I could rely on, I would be happy

8 to consider that. But I just don't.

9 MR. DEMOISEY: Well, I doubt you would find

10 one, I would guess. It would seem to me that it would

11 simply be covered. If I'm able to articulate and my

12 client agrees, that if the appellate courts rule that

13 the Court, I'm just going to say essentially is correct

14 and we are not and that he is compelled to answer the

15 question, then he either answers it because he is

16 compelled to do so or he doesn't and he's in contempt,

17 and you do the things you have to do in order to

18 contempt. But we can also say, I think we can

19 stipulate and waive the reassertion of the same

20 questions under this hypothetical we would have lost.

21 I think it is appropriate for a client to be able to do

22 that. It's his waiver to make. And certainly as an

23 officer of the court, I don't think it's appropriate

24 for me to go back upon such a stipulation. And it

25 would be no different in many respects that I can see

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1 by an agreement, you know, we'll give you immunity, and
2 with that protection, the person granted immunity must
3 testify. Certainly he has waived his, you know, Fifth
4 Amendment right, but he has agreed to do so.
5 BY THE COURT: All right. Mr. Smith, I'm
6 looking at a case here Woods versus Commonwealth, 712
7 S.W.2d 363. It was a criminal trial, and a witness was
8 brought forth to testify, refused to testify, 1986
9 case, asserting a Fifth Amendment protection. The
10 Court brought the defendant -- or witness in on several
11 different occasions, would not even allow himself to be
12 sworn in as a witness. And the Court advised him after
13 having an in-camera proceeding, advised him that --
14 that the Court did not determine that any testimony
15 given by the witness would be incriminating, or if the
16 witness to testify continued to refuse to do so and was
17 cited with contempt, sentenced to 5 months and 29
18 days. The appeal followed. Appellate courts upheld
19 the trial court's decision. If the witness refuses to
20 testify or be sworn or give a deposition, he shall be
21 imprisoned so long as he refuses until he testifies
22 before an officer who is authorized to take his
23 testimony. I guess it appears at least for purposes of
24 a contempt proceeding, for purposes of answering these
25 questions, refusal to answer any of these questions

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1 would be enough if this Court finds him in contempt fo
2 review by the appellate courts.
3 MR. SMITH: Well, I think --
4 BY THE COURT: It doesn't answer the questio
5 about what does he have to answer at the next hearing.
6 MR. SMITH: Right. That's right. It doesn't get you
7 there. It only -- it doesn't get the ruling on whethe
8 he has to answer. That takes the specific question. I
9 have no question that based on what's happened here
10 today there's sufficient for contempt -- there's
11 sufficient evidence for contempt, but not to rule on
12 questions that haven't been asked.
13 BY THE COURT: But if --
14 MR. DEMOISEY: It seems to me it's res
15 judicata if I make the same argument.
16 BY THE COURT: If the defendant waives any
17 future objections on these same grounds, I mean, as
18 pointed out if you were to ask him a question about
19 some unsolved murder, that might be something
20 different. But if he waives the right to raise the
21 same objection on any future grounds, either that ther
22 is a privilege against self-incrimination because of
23 future criminal charges or because of the contempt
24 proceedings, then what does it matter what other
25 questions you might want to ask at this point --

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1 MR. SMITH: Because --

2 BY THE COURT: -- I mean, if he waives the

3 right to make that objection?

4 MR. SMITH: Okay. Number one, there have been many

5 questions that I do not believe, even if he's right on

6 those grounds, that there was a proper basis for the

7 invocation of the privilege, because there are a lot of

8 questions that the law would say that doesn't ask for

9 information that's incriminatory. And that has to be a

10 question-by-question inquiry. That's my first point.

11 My second point is it's easy to sit here and say we

12 won't raise that on the same issues. But as a

13 practical matter, if Mr. DeMoisey and I sat down right

14 now and tried to write out the metes and bounds of some

15 agreement that would allow us to stop now that would

16 thereafter be applicable to future questions, it would

17 take us longer to try to work that out than it would to

18 ask the questions, because lawyers are lawyers, and

19 they're going to try to limit it and explain around it

20 and find ways out of it. I'm not in any way being

21 critical by saying that, but I just don't think it

22 works as a practical matter to make some statement late

23 in the day that, 'well, gosh, it sounds like it's all

24 the same issues to me, let's just go up, and we'll be

25 bound by that for future questions', as a practical

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1 matter works.

2 MR. DEMOISEY: It seems to me that if the

3 Court has listened to the argument, you have said he

4 should answer. We have articulated to the best that I

5 can our reasons. Those reasons are either subsequently

6 wrong or right. If they're wrong, we reconvene. He

7 now knows he has to answer. He does or does not, or I

8 mean, under pain of contempt. But the argument is

9 gone. The Court has ruled. I mean, the appellate

10 court has ruled. On the other hand, if we are correct,

11 then we're -- the reverse is true. We don't have to go

12 through all of this subsequent every question, every

13 question, because he under that theory would not have

14 to incriminate himself on either a criminal contempt

15 charge or that it could be used in subsequent potential

16 criminal litigation. So it's the same either way. I

17 don't understand how asking 150 more of the same type

18 of questions for me to sit here and say ditto to the

19 Court changes any of that.

20 BY THE COURT: Except that the appellate

21 court has that specific question to review and to

22 decide whether or not the objection is proper for that

23 question even though it may not have been proper for

24 another question. Similar but still not the same.

25 MR. DEMOISEY: Well, but the points are, if

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1 I've understood the Court, you have said that you don't
2 believe the criminal contempt -- the Fifth Amendment is
3 available for a criminal contempt. That's correct or
4 incorrect, boom. Secondly, under the law as I have
5 read it here, if there is a reasonable expectation that
6 the information given would lead to the conviction --
7 or could be used against him or aid or provide a chain
8 or link, then it is available. But my point is, all
9 right. Let's assume that we only go up on the
10 questions we have now, and the appellate courts give us
11 an answer. Then we will know how to go through the
12 rest of the questions, if you want to look at it that
13 way. Either my position is incorrect and he must
14 answer and he has -- and he knows he has to, or we now
15 know what the Court of Appeals or the Supreme Court has
16 said in terms of how close that nexus must be. The
17 first question is simply a yes-no question, contempt.
18 It either is applicable or is it not. That's not going
19 to change. The second one if you go case by case, at
20 least we will know what the Court has now said in 1996
21 as opposed to 1971 on this particular issue with this
22 particular fact situation. Now, how close does close
23 have to be? So we're either -- and we'll know what --
24 I don't know how many questions we've got at this
25 point. Let's assume 20. We'll know what those have to

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1 be. So it seems to me we're going to come back one way
2 or another, and even if we stay all night, we're still
3 not going to get where Mr. Smith wants to go, or we're
4 going to get where I don't want to go.
5 BY THE COURT: Well, I mean, I have a genuine
6 concern, Mr. DeMoisey, about there being -- not with
7 the issue about contempt but with the issue about
8 particular questions as far as him incriminating
9 himself. Some of those questions, i.e., where did the
10 meeting take place and who was there, may not be in and
11 of themselves such that would incriminate him, but
12 other questions may, i.e., what was the first one
13 about, is that everything there is. Now, maybe that
14 one is. Maybe the appellate courts have to see each
15 one individually. You know, I don't know. And if they
16 give us a mixed box, I mean, it seems to me it can go
17 three ways. One, they say no, there's no Fifth
18 Amendment privilege; two, yes, there is; or three,
19 sometimes there is and sometimes there isn't. And two
20 of those they lose.
21 MR. DEMOISEY: It seems to me the Court has
22 gone past that, because every question that we argue,
23 the Court has already said Fifth Amendment does not
24 apply to criminal contempt, and any answer he gives
25 here cannot violate the Fifth Amendment, because it

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1 can't be used subsequently against him. No matter what
2 I say of what the nexus is, the Court said it doesn't
3 matter. Well, I don't know what we're going through
4 all this for. We're not doing the third step. I
5 haven't perceived it yet. I mean, even when I say, I
6 mean, if he says, 'oh, yes, I've got a set of documents
7 secreted in the bottom of my boat', which is to me
8 evidence that he has, according to their allegations,
9 stolen property, which is a crime if that's all true.
10 And yet the Court has said, 'oh, no, you have to answer
11 that'. Now, it is -- I think what the Court, if I
12 understood you right, what you're saying is it's
13 because it can't be subsequently used against him,
14 because it's coerced.
15 MR. SMITH: Your Honor, we're back into arguing the
16 merits again. I mean, the point is we need to get
17 these things on the record, and we're spending an awful
18 lot of time going over the same legal arguments.
19 BY THE COURT: Let's just continue with the
20 questions.
21 Q. Mr. Williams, have you ever either before or after
22 the entry of the temporary injunction given any
23 documents to Richard Daynard which are now subject to
24 the temporary injunction?
25 MR. DEMOISEY: Object to the form of the

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1 question. He's asked both sides of the question.
2 BY THE COURT: It's compound. Let's break it
3 down.
4 Q. Before the entry of the temporary injunction in
5 January of 1994, did you provide to Richard Daynard any
6 documents which are now subject to the temporary
7 injunction?
8 A. The answer lies in that box. I did discuss
9 information concerning Wyatt's billing practice for
10 Brown & Williamson as it pertained to labor law, which
11 I had a graduate school course in. And I was
12 particularly concerned about the fact that we were
13 given comp time and not overtime. And some of the --
14 we were -- actually had two timecards. And one
15 timecard was 50 hours and another timecard was what was
16 submitted to Brown & Williamson. Wyatt was authorized,
17 I assume, to do this for the first three years of my
18 employment there. And the -- the fact that we did not
19 have any -- we didn't have Thanksgiving or any of the
20 holidays, including Martin Luther King, but, neither
21 did we have Christmas or sick leaves in the first three
22 years. We were -- we had two different time cards that
23 we'd submit. And the problem was that I saw this as a
24 problem in a labor and management type situation where
25 you were more or less breaking the law in the sense of

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1 -- of taking comp time. And we had to work -- for
2 example, my billing time was 2,000 and close to 80
3 hours during my first year there. And I worked 2,080
4 hours. But that gives you no time for any other, you
5 know, for the, you know, for holidays or sick days.
6 Now, this policy changed after the fourth year.
7 Q. Mr. Williams, I apologize for interrupting.
8 A. That's all right.
9 Q. The question's just very simple. Did you provide
10 any documents to Mr. Daynard --
11 A. Yes, sir.
12 Q. -- that are now subject to the temporary
13 injunction --
14 A. That are now subject.
15 Q. -- prior to the temporary injunction.
16 A. Before the junction?
17 Q. Right.
18 A. Yes. I discussed some of the timecards and the
19 way we -- the way they -- they -- they took the
20 timecards. And if you'll open the box, you'll see wha
21 I'm talking about.
22 Q. Yes. This is a box that -- what is in the box
23 that you're referring to?
24 A. Well, am I allowed to say?
25 Q. Sure. It's a box you've provided to Mr.

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1 Ballantine pursuant to the temporary injunction.
2 A. I don't know what's in the box.
3 Q. All right. Let's open it up and look. Can you
4 open it for us?
5 A. Yeah. Well, I think it's already been opened.
6 I'm not sure. But --
7 MR. BALLANTINE: Your Honor, in light of Mr.
8 Williams' statement there, I represent to this Court
9 that that box was furnished in the Fox DeMoisey office
10 pursuant to what I said earlier. It was sealed in
11 exactly the condition it's in right now. It has been
12 maintained in my office in exactly that same
13 condition. It has never been opened. And I
14 categorically deny the implication by this witness.
15 A. I recant.
16 MR. BALLANTINE: It has not been opened by
17 anyone at anytime since its delivery to me in that
18 deposition in January of 1994.
19 A. Okay. I see this on top of it. So I can assure
20 you that it probably wasn't.
21 Q. Now, without going through all this, do you know
22 what these materials are?
23 A. They were things that came out of -- there were
24 two days that -- the last two days that I left with
25 boxes from Wyatt -- I mean, from Brown & Williamson.

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1 Q. Was this the weekend that you went in and worked
2 the long hours?
3 A. I didn't work the long hours. I left on the 13th
4 of March at 11:30 in the morning. Before I left I
5 handed in my key to the room. We all had keys. And I
6 went over to Ernest, handed him the key, Ernest
7 Clements who was the paralegal in charge, and I took --
8 I had a box over here. And I said, "Ernest, you want
9 to go take a look through that box and see if, you
10 know, if there's anything in there that you don't want
11 me to take?" Some of these things were in there. And
12 since the order read and the way I interpreted these
13 things, were -- were in there. And on that day, that
14 day some of these things went out, I think some of
15 these things went out. Some documents went out as well
16 that day.
17 Q. You took some documents out of Brown & Williamson
18 your last day?
19 A. I later found that they were in the box. And
20 particularly I was concerned -- well, this is mine
21 actually. This is mine. He didn't have a program for
22 that computer and I did. So, I mean, a book. So this
23 actually belongs to me, but I didn't know whether I
24 should because I took it out when I took it out. And
25 this was a public document that I reviewed on

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1 addiction. It's just something I had.
2 Q. Something you had at Brown & Williamson -- I mean
3 at Wyatt, Tarrant & Combs?
4 A. Well, this was, I know. Now, this was in my
5 office, I think, and I just turned it in because it was
6 one of the hearings, which is what I was talking about
7 earlier.
8 Q. All right. And you -- just to make this clear,
9 you've got a purple file that says Addiction Or Habit,
10 First Surgeon General's Report.
11 A. Right.
12 Q. And that's a document that you obtained while you
13 were working for Wyatt, Tarrant & Combs?
14 A. No, it's not.
15 Q. But you had it at Wyatt, Tarrant & Combs?
16 A. No, I didn't, not that one. I say some of these
17 were, but, you know, some of them weren't.
18 Q. Why did you put this in the box and return it if
19 you didn't get it at Wyatt?
20 A. Because I didn't understand the order. I just
21 threw everything that I, you know, I threw everything
22 that I could find.
23 Q. And you also have a copy of hearings before the
24 Committee On Energy and Commerce?
25 A. Right. I ordered that.

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1 Q. March 6 and August 1, 1991. Did you have that at
2 Brown & Williamson or Wyatt?
3 A. No. That's scientific. It was not.
4 Q. Let's finish going through this.
5 A. Okay.
6 Q. Now, you have another document entitled Formula at
7 the top. What is that?
8 A. Well, that's the formula for figuring child
9 support. I --
10 Q. Why did you give that -- why did you give that to
11 Mr. Ballantine?
12 A. Well, because it was in -- it was in the box that
13 I took out. I mean, I put everything that was there
14 that I could possibly get my hands on.
15 Q. What else was in this sealed box that you took
16 out?
17 A. Well, as I said, time cards were in here. And I
18 don't know exactly where they are, but they're here.
19 And I guess if you want to go through them. Yeah.
20 Here they are. But on the last day of March that I was
21 employed there we had by then been given time -- well,
22 the year before. This is a recommendation that I wrote
23 for Ernest Clements when he was with Vincent and
24 Elkins. He asked me to write that for Chris George,
25 and I did, because Chris George didn't have time to do

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1 it. And --
2 Q. You can just run through these quickly if you
3 would.
4 A. Well, it's just, basically it says he's doing a
5 great job. That was in '89, I think. This is a -- a
6 letter, a note to Ernest J. Clements on 3-21-91 which
7 we had a discussion about the timecards and about, for
8 example, this week --
9 Q. If it's about the timecards, that's all I need to
10 know for the purpose of this deposition.
11 A. Well, I understand. I'm trying to explain that
12 this was one week in which -- we had an actual timecard
13 and a -- well, it was a fake timecard. And one girl
14 was allowed enough time off to take four weeks in
15 England. I mean, temporary workers. We were temporary
16 workers.
17 Q. What's the next document, Mr. Williams?
18 A. This is a six-hour --
19 Q. You've already told me what that document is.
20 It's about timecards.
21 A. No, it's not. It's about -- it's not specifically
22 about timecards. It's about our page count sheet and
23 timecards and how the regular employees were treated in
24 such a way that they could take sick leave. We
25 weren't.

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1 Q. Mr. Williams, we're not worried today about your
2 job conditions or the method of time keeping at Wyatt.
3 A. Well, you asked me the question --
4 Q. I want to know, just identify the documents if
5 you'll go through and do that for me.
6 A. For Mr. Daynard that you asked?
7 Q. I want you right now to identify these documents,
8 and then we'll find out about Mr. Daynard.
9 A. Well, I discussed these documents right here that
10 were the timecards in terms of, well, here this week
11 was 49 hours.
12 Q. Mr. Williams, I don't need to go into the detail
13 of the timecards.
14 A. Okay. Well, what do you want me to say then?
15 Q. Okay. You talked to Mr. Daynard about the
16 timecards. In relation to potential litigation?
17 A. No. In litigation that was possible in terms of
18 the labor laws.
19 Q. All right.
20 A. Because I perceived it to be -- actually I talked
21 to Lorraine Harris, too, who was very much --
22 Q. What other documents came out of that envelope?
23 A. Well, this is a memorandum where we are -- a
24 temporary paralegal's working on the litigation
25 document review team, that up to five times per year

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they may receive eight hours paid leave because of illness.

Q. Do all of these documents in this envelope --

A. This is April 8, 1991.

Q. Do all the documents in this envelope deal with terms and conditions of work and pay?

A. In this?

Q. Yes, the envelope you've just opened.

A. I'm reasonably certain that they do.

Q. May I look at these?

A. Yeah. Go right ahead. This was a contract that -- well, this is not the contract. This is -- this is something that Chris George wrote for me. And these are our hours, hour sheets. Mine was 2,060 in --

Q. I think it's fair to say, Mr. Williams, that all of the documents in the envelope that has just been opened deal with employment issues of some kind or another, correct?

A. No; because of the correct identification -- here's some more timecards.

Q. Because what?

A. Because, as I say, some of this was actually mine, and I had a discussion as to what was public documents and what was not. In my office I ordered --

Q. Mr. Williams --

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1 A. -- things from the --
2 Q. -- you still haven't answered my question. The
3 documents I hold in my hand here that we've looked at
4 just in the last few minutes, they deal with employment
5 matters, don't they?
6 A. Right. But these --
7 Q. Okay. Let's go to the next. I'm talking about
8 the documents in my hand. Let's go to next envelope,
9 please, sir.
10 A. Well, yeah, they do. There were various phases of
11 that. With that particular matter I was concerned that
12 really that there was some litigation, because it
13 seemed perhaps -- I mean --
14 Q. Mr. Williams, as far as I'm aware, there's no
15 question pending.
16 A. Oh, I'm sorry. Here's Brown & Williamson document
17 review of some of the hours. These are related to
18 employment.
19 Q. Are these time issues again?
20 A. There's a picture that was there of my daughters.
21 Q. These are daily time reports. And there's a
22 photograph here.
23 A. Yeah. That was at a party.
24 Q. All right.
25 A. My children and Barbara Brotsge. This concerns a

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1 six-hour meeting I had with Ernie about the fact that
2 the documents had been reduced and we couldn't see
3 them. We couldn't read them. And they were being
4 microfilmed and then photographed. And the explanation
5 I got was, well, if you can -- if you can read them,
6 then we can give them to plaintiffs, and they'll have
7 to read them. I say it slowed down the time and, you
8 know, essentially our page count was -- do you want me
9 to explain this one?
10 Q. Just tell me the subject.
11 A. This was his response to my statement.
12 Q. Okay. What's in the next envelope?
13 A. Well, that's okay. I don't really remember. Pay
14 stubs and Far Side. Wyatt, Tarrant, Combs, a note from
15 somebody. Generally personal items, some of these
16 personal items, recipe. They were all things that were
17 in that box or the box. And timecards, and just a
18 little humor there, Far Side again. There wasn't -- we
19 were -- timecards, hours billed, et cetera.
20 Q. I'm sorry?
21 A. Hours billed, et cetera. This is -- this is a
22 document from BAT that was given to us. And this is --
23 yeah. They just give that to us. I don't think that's
24 -- I mean, that's their -- that's their year-end
25 report or something like that. I don't know.

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1 Q. All right.
2 A. It was just something that was in the box.
3 Q. All right. What else is in this box?
4 A. Another BAT industry publication. Pens.
5 Q. Now, does that complete --
6 A. That's everything.
7 Q. Does that complete everything that was in the box
8 that you returned to -- to Mr. Ballantine that's with
9 us here today, is everything that's in it? Is it
10 empty?
11 A. Oh, is it empty?
12 Q. Have we been through everything?
13 A. Yes. Appears to be.
14 Q. All right. Now, there's also a box here with us
15 today that is an NEC computer box. Does that contain
16 the central processing unit from your computer?
17 A. I'm sure it does if that's --
18 Q. You packed it, didn't you?
19 A. Yeah.
20 Q. Okay. Is that what it looked like when you packed
21 it?
22 A. I don't know. The -- does it have top on it and
23 bottom and so forth? Yeah.
24 Q. Doesn't appear to have been opened?
25 A. Computer.

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1 Q. Doesn't appear to have been opened?
2 A. Oh, no. I don't really know if it's been opened.
3 I'm not saying it's been opened. It's just a question
4 of if we open it, we'll find a computer.
5 Q. Okay.
6 A. I'm saying probably.
7 Q. If it's good enough for you, it's good enough for
8 me.
9 A. Well, it's good enough for me.
10 Q. Now, the third item is an envelope with some
11 writing on it. Is that your -- what you've described
12 as your narrative? Is that what's contained in there?
13 A. There were two of them. This is the signatures of
14 -- it's sealed. Yes.
15 Q. That's the narrative?
16 A. I assume, yes.
17 Q. All right. Now --
18 A. It's been a long time.
19 Q. Why did you consult Richard Daynard about a labor
20 law problem when you understood his area of expertise
21 to be tobacco litigation?
22 A. Well, as I say, because when I first encountered
23 him, he was involved in both the tobacco litigation,
24 some of the concerns that I had. I think that his
25 relationship with Stop Teenage Addiction To Smoking was

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1 interesting to me, and also the Farmers Insurance since
2 he had testified there.
3 Q. But those aren't issues related to labor law, are
4 they?
5 A. No, not exactly. But then if you're talking about
6 these things, these things are, you know, they're --
7 they're not related to documents. They're just sort of
8 -- as a matter of fact, nobody said any -- I mean,
9 when I took these out, this kind of thing out.
10 Q. How did you happen to meet with Richard Daynard in
11 Florida?
12 A. Oh, gosh. It was through a question of -- of an
13 attorney-client privilege. I think that that would be
14 it.
15 Q. Did you arrange -- did one of you or the other
16 request that the meeting be in Florida?
17 A. Yes.
18 Q. And when was the meeting?
19 A. I don't remember. '92.
20 Q. Was anyone else present at the meeting?
21 A. I will take the Fifth Amendment on that or the
22 attorney-client privilege on that.
23 Q. I would request that the Court order him to answer
24 that question on the grounds that the presence of a
25 third party not a party to the -- to any

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1 attorney-client relationship would waive the attorney
2 client privilege.
3 A. I've got to take a break here, Judge.
4 Q. And I would request that he answer the question.
5 BY THE COURT: I can't make that jump,
6 because I don't know who the third party is. It may be
7 another attorney working with Mr. Daynard, which would
8 be subject to the privilege.
9 Q. Well, I think he's -- I think he's required to
10 say.
11 A. I'm dying up here.
12 Q. Want to take a break? The video operator needs to
13 change tapes, anyway. But let's take a short break.
14 VIDEOTAPE OPERATOR: We'll go off the
15 record.
16 (SHORT RECESS, AND THE FOLLOWING PROCEEDINGS
17 OCCURRED OFF THE VIDEOTAPE)
18 MR. SMITH: Let's go back on the record. Can
19 you start over? I'm sorry.
20 MR. DEMOISEY: Pursuant to the discussion
21 we've had off the record, my client is ill. I'm going
22 to leave here. I'm going to see if I can find a
23 physician who can look at him to assess whether it's
24 just a situation where he's just tired and has pushed
25 it too hard today or if there's a more serious problem

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1 to the effect of whether or not it would be advisable
2 for him to complete this deposition tomorrow if he
3 can. And we were talking about some point in time to
4 come in tomorrow to begin if he's able. Prior to that
5 I will call -- I think I still have your home number
6 some place.
7 MR. BALLANTINE: I'm in the book.
8 MR. DEMOISEY: I will call you to advise you
9 either way at home tonight.
10 MR. BALLANTINE: Right.
11 MR. DEMOISEY: Because I don't know how long
12 it's going to take to me to get hold of a physician.
13 If, in fact, it's a physician's opinion it's not
14 advisable to go forward, I suppose I'll advise the
15 Court, and we'll schedule it to resume some other day.
16 If it's okay, we'll be here, meet here to go find a
17 place at what time?
18 MR. BALLANTINE: I'd like to suggest eight
19 o'clock. How does that hit you, Gordon?
20 MR. SMITH: Fine. I'm the least problem in
21 scheduling.
22 MR. DEMOISEY: Well, I've got to get kids
23 off, and it's -- for me to collect Merrell and get down
24 here and walk across from the Starks Building and all
25 that sort of thing, eight's probably pushing it.

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1 MR. BALLANTINE: Eight-thirty?

2 MR. DEMOISEY: Well, if we're not tying up

3 the Court's time --

4 BY THE COURT: It's just a question of Mr.

5 Williams getting a flight out.

6 MR. BALLANTINE: There's one shortly after

7 noon that has plenty of seats available. There's the

8 same flight he was going to catch tonight is wide open

9 according to the agent.

10 MR. DEMOISEY: Why don't we say nine

11 o'clock. That way I'm not going to have to push it too

12 hard. And we can start pretty well on time. It will

13 give two hours. You said you thought two hours would

14 probably clear it up?

15 MR. SMITH: I didn't say that. I said we

16 could make a lot of progress in two hours. I didn't

17 say we could finish in two hours.

18 MR. DEMOISEY: What estimation of time?

19 MR. SMITH: Fox, genuinely I need to go back

20 and see. I can't really make an estimate for you. But

21 I will try to reorganize and hit some high spots and

22 expedite the thing. But I don't have an estimate right

23 now.

24 MR. BALLANTINE: So we're going --

25 BY THE COURT: Start at nine o'clock.

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1 MR. DEMOISEY: Why don't we start at nine
2 o'clock. I don't know if you have. I don't know what
3 they are. I have a few motions I might have to exit
4 for or not.
5 MR. BALLANTINE: We can adjourn or whatever
6 on those.
7 MR. DEMOISEY: Yeah. And I guess I'll just
8 try to tell him why don't he try to book a flight for
9 the six o'clock flight. That way nobody's overly
10 pushed.
11 MR. BALLANTINE: Two other things. One is if
12 the physician says he ought not to go through with
13 this, I would like a brief letter to that effect on the
14 physician's letterhead to confirm that. Second is that
15 as I understand, we will proceed in generally the same
16 fashion we've gone without the Court needing to be
17 present. The questions will be asked. If the
18 privilege is asserted, we will put on the record the
19 motion for the Court to order the witness to answer the
20 question and then put the question to the witness that
21 if the Court overrules the objection and says the
22 witness should answer, that he would nonetheless
23 respectfully decline to answer, so the record is
24 complete as to each question as to which the privilege
25 is asserted. Is that a reasonably accurate statement

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of what we're going to do?

MR. DEMOISEY: Right.

MR. SMITH: Last thing, we have opened this box up until today has been sealed and in Jack Ballantine's possession. We've now identified the items that are in there on the video and the stenographic record. And I would simply propose that Jack now take them back and seal them with his own tape and simply maintain it since there is now no issue as to what was in there or should have been in there. Is that all right?

MR. DEMOISEY: That's fine.

MR. BALLANTINE: I'll take these other two back. Now, you have -- you have been permitted under the court order to review the narrative, have you not?

MR. DEMOISEY: I believe so. I have not.

MR. BALLANTINE: Okay.

MR. DEMOISEY: I don't have a copy of it.

MR. SMITH: I had one hand delivered to your office in your chair. I put it in your chair personally.

MR. DEMOISEY: Is that the manila envelope?

MR. SMITH: Yeah.

MR. DEMOISEY: Okay. I have not looked at that or the box.

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1 MR. SMITH: You did get it.

2 MR. DEMOISEY: I did get it. There's a box

3 and an envelope sitting in there. I take time looking

4 at this stuff.

5 BY THE COURT: Waiting to see Mark Hebert

6 with Channel 11 News.

7 MR. SMITH: You did get it.

8 MR. DEMOISEY: Yeah.

9 MR. BALLANTINE: Now then, at this stage

10 since I'm the only one left who hasn't seen that or had

11 an opportunity to, I may very well open that and review

12 it.

13 MR. DEMOISEY: That's fine. Everybody else

14 has.

15 MR. BALLANTINE: As to this computer, I may

16 open it just to see that there's not some paper or

17 documents in there. If it's a computer, I'll guarantee

18 you I'll just close it back up, because I'm computer

19 illiterate.

20 BY THE COURT: Do you want to open it now?

21 MR. BALLANTINE: Sir?

22 BY THE COURT: Do you want to open it now?

23 MR. SMITH: Sure, I do.

24 MR. BALLANTINE: Sure.

25 (COMMENTS OFF THE RECORD)

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1 MR. BALLANTINE: Pursuant to permission of
2 the Court, we did open the box that purportedly had in
3 it the computer, and it does, indeed, appear to have
4 the business working part of a computer, not the
5 screen. But it seems to be a computer and nothing else
6 other than buffer paper to keep it from rattling
7 around. I'm going to take this back and just maintain
8 it in my office.
9 MR. DOUGLAS BALLANTINE: Has a floppy disk in
10 it, too.
11 MR. BALLANTINE: It did have one floppy.
12 MR. SMITH: Had one five-inch floppy in one
13 of the drives.
14 MR. BALLANTINE: Okay.
15 MR. DEMOISEY: And so it's just going to be
16 back sealed. We're not going to try to clean it or
17 download it?
18 MR. BALLANTINE: I'm not at this point. If
19 that comes up, we'll, you and I will talk about it. If
20 we have to, we'll get with the Court on it or
21 otherwise. For the time being, I'm not going to do
22 anything with it.
23 MR. DEMOISEY: Okay.
24 (DEPOSITION WAS ADJOURNED AT 6:41 P.M.)
25 *** *** ***

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1 STATE OF KENTUCKY
2 COUNTY OF JEFFERSON
3
4 I, NANCY L. NUNNELLEY, RPR, RMR, Notary
5 Public, State of Kentucky at Large, do hereby certify
6 that the foregoing deposition of MERRELL WILLIAMS, JR.,
7 was taken at the time and place stated in the caption;
8 that the appearances were as set forth in the caption;
9 that prior to giving his testimony the witness was
10 first duly sworn by me, that said testimony was taken
11 down by me in stenographic notes and thereafter reduced
12 under my supervision to the foregoing 165 typewritten
13 pages and that said typewritten transcript is a true,
14 accurate and complete record of my stenographic notes
15 so taken.
16 I further certify that I am not related by
17 blood or marriage to any of the parties hereto and that
18 I have no interest in the outcome of captioned case.
19 My commission as Notary Public expires July
20 10, 1999.
21 Given under my hand this the 27th day of
22 January 1996, at Louisville, Kentucky.
23
24 _____
25 NOTARY PUBLIC

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